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No. 37]

NEW DELHI, SATURDAY, SEPTEMBER 12, 1992/BHADRA 21, 1914

इस भाग में भिन्न पृष्ठ संख्या वी जाती है विवर से इस बहु संख्या संक्षेप के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as
a separate compilation

भाग II—भाग 3—उप-भाग (ii)
PART II—Section 3—Sub-Section (ii)

भारत सरकार के मंत्रालयों (रक्त मंत्रालय को छोड़कर) द्वारा जारी किये गये तारीखिक घोषणा और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than
the Ministry of Defence)

कार्मिक, लोक शिक्षायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई विली, 24 अगस्त, 1992

का.ओ. 2362.—केन्द्रीय सरकार द्वंद प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उपवाग (8) द्वारा प्रदत्त¹
शक्तियों का प्रयोग करते हुए श्री पी. आर. नामजोशी, एडवोकेट, बम्बई हाई कोर्ट को सेशन कोर्ट, पगड़ी, गोवा में श्री कास्टेन्स तो
प्रिवेटिव ऑफिसर, राजस्व एवं आसूचना मारमोगोवा (गोवा) के विवर परीक्षण के लिए लंबित रिझी विरोध पुलिस इवांग मामला सं.
आर. सी. 17/91/एससीबी/बम्बई के संचालन के प्रयोगन के लिए विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[संख्या 225/18/91-ए.वी.डी-II]

ए. सी. शर्मा, भवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
(Department of Personnel and Training)

New Delhi, the 24th August, 1992.
S.O. 2362.—In exercise of the powers conferred by Sub-
Section (8) of Section 24 of the Code of Criminal Procedure
1973 (2 of 1974), the Central Government, hereby appoints

Sh. P. R. Namjoshi, Advocate Bombay High Court as Special
Public Prosecutor for the purposes of conducting trial of
Delhi Special Police Establishment case No. RC. 17/91/
SCB/BOM against Sh. Constancio Fernandes, Preventive
Officer, Revenue & Intelligence, Marmugao (Goa) pending
trial in the Sessions Court at Panaji, Goa.

[No. 225/18/91-AVD-II]

A. C. SHARMA, Under Secy.

वित्त मंत्रालय

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 20 अगस्त, 1992

का.आ. 2363.—बैंककारी विनियमन अधिनियम 1949 (1949 का 10) की धारा 53, द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिज़ब बैंक की सिफारिश पर, एतद्वारा, घोषणा करती है कि उक्त अधिनियम की धारा 9 के उपबंध, बैंक ऑफ मदुरा लि. पर, तंजौर ज़िले के ग्राम थिट्टाकुडी, तमिलनाडु में उसके, द्वारा धारित 2 एकड़ 13 सेंट्स जिसकी आर.एस. सं. 212/4, को भू-संपत्ति पर 10 जून, 1993 तक की श्रव्यधि तक लागू नहीं होंगे।

[सं. 15/6/91-बी.ओ. एवं ए.]

के. के. मंगल, अवर सचिव

MINISTRY OF FINANCE

(Department of Economic Affairs)
(Banking Division)

New Delhi, the 20th August, 1992

S.O. 2363.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendation of the

Reserve Bank of India, hereby declares that the provisions of Section 9 of the said Act shall not apply to the Bank of Madura Ltd. for a period upto 10th June, 1993 in respect of the landed property bearing R. S. No. 212/4 measuring 2 acres and 13 cents held by it at Thittakudi village in Tanjore District, Tamil Nadu State.

[No. 15/6/91-BO&A]

K. K. MANGAL, Under Secy.

नई दिल्ली, 25 अगस्त, 1992

का.आ. 2364.—सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदबली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार, वित्त मंत्रालय, आर्थिक कार्य विभाग (बैंकिंग प्रभाग) के 12 जून, 1975 के भारत के राजपत्र के भाग II खंड 3 के उपबंध (ii) में प्रकाशित 12 जून, 1975 की अधिसूचना सं. का.आ. 2186 का अधिकरण करते हुए, परन्तु ऐसे अधिकरण से पहले किये गए कार्यों और करने के लिए छोड़े गए कार्यों को छोड़कर, केन्द्रीय सरकार, एतद्वारा निम्नलिखित सारणी के कालम (i) में उल्लिखित उन अधिकारियों को नियुक्त करती है, जो सरकार के राजपत्रित अधिकारियों के स्तर के समकक्ष अधिकारी होंगे, और उक्त अधिनियम के प्रयोजन के लिए संपदा अधिकारी (एस्टेट ऑफिसर) होंगे और जो उक्त अधिनियम द्वारा प्रदत्त शक्तियों का प्रयोग करेंगे तथा उसके द्वारा या उसके अधीन उक्त सारणी के कॉलम (2) में क्रमानुसार उल्लिखित सरकारी स्थानों के संबंध में अपने अधिकार क्षेत्र की स्थानीय सीमाओं के अंतर्गत संपदा अधिकारियों को सौंपे गए कर्तव्यों को पूरा करेंगे:—

सारणी

अधिकारी का पद

(1)

सरकारी स्थानों की श्रेणियों और अधिकार क्षेत्र की सीमा

(2)

उप महाप्रबंधक, महानगर, बम्बई अंचल, यूनियन बैंक ऑफ इंडिया,
239, विधान भवन मार्ग, नरीमन प्लाइट, बम्बई-400021
उप महाप्रबंधक, अंचल कार्यालय, यूनियन बैंक ऑफ इंडिया,
जीवन प्रकाण, 6/7 जीवन वीभा निगम भवन, शिवाजी नगर,
पुणे-411005

उप महाप्रबंधक, अंचल कार्यालय, यूनियन बैंक ऑफ इंडिया,
177/1 हाईकोर्ट वे, आश्रम रोड अहमदाबाद-380009

क्षेत्रीय प्रबंधक, क्षेत्रीय कार्यालय, यूनियन बैंक ऑफ इंडिया, शिरम
चंद्रबास, वरछा रोड, खाड बार, मुरठ-395000

यूनियन बैंक ऑफ इंडिया के अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर ग्रेटर बम्बई और डाणे क्षेत्र में लिए गए परिसर।

यूनियन बैंक ऑफ इंडिया के अथवा उसके द्वारा अथवा उसकी ओर से पट्टे पर महाराष्ट्र के सभी जिलों (ग्रेटर बम्बई और डाणे क्षेत्र के अलावा) और गोवा में लिए गए परिसर यूनियन बैंक ऑफ इंडिया के या उनके द्वारा या उनकी ओर से पट्टे पर गुजरात के सभी जिलों में लिए गए परिसर।

यूनियन बैंक ऑफ इंडिया के या उसके द्वारा उनकी ओर से पट्टे पर सध राज्य क्षेत्र दमन में लिए गए परिसर।

क्षेत्रीय प्रबंधक, क्षेत्रीय कार्यालय, यूनियन बैंक ऑफ इंडिया, १, यूनियन बैंक ऑफ इंडिया के या उसके द्वारा या उसकी ओर से जगत्प्राय प्लॉट, प्रथम तल, रादिया भवन, डॉ. याग्निक रोड, पट्टे पर संघ राज्य क्षेत्र तीव्र में लिए गए परिसर।

राजकोट-३६०००१

उप महा प्रबंधक, अंचल कार्यालय, यूनियन बैंक ऑफ इंडिया,
२६/२८ डी, कनॉट प्लेस, नई दिल्ली-११०००१

क्षेत्रीय प्रबंधक, क्षेत्रीय कार्यालय, यूनियन बैंक ऑफ इंडिया,
एस. डी. एम. अस्पताल परिसर, भवानी सिंह मार्ग, बापू नगर,
जयपुर-३०२०१५

उप महा प्रबंधक, अंचल कार्यालय, यूनियन बैंक ऑफ इंडिया,
शेश्वरी कॉम्प्लेक्स, प्रथम तल भड़भड़ा रोड, टी. टी. नगर,
भोपाल-४६२ ००३

उप महा प्रबंधक, यूनियन बैंक ऑफ इंडिया होटल कलार्क्स अवध,
८, महारामा गांधी मार्ग, लखनऊ-२२६००१

उप महा प्रबंधक, अंचल कार्यालय, यूनियन बैंक ऑफ इंडिया,
अल्पे कोटे, प्रथम मंजील, २२५ सी, आचार्य जे.सी. बोन रोड,
कलकत्ता-७०००२० (पश्चिम बंगाल)

क्षेत्रीय प्रबंधक, क्षेत्रीय कार्यालय, यूनियन बैंक ऑफ इंडिया, जी.
एन. बी. रोड, चांदमारी, गुवाहाटी-७८१००३

क्षेत्रीय प्रबंधक, क्षेत्रीय कार्यालय, यूनियन बैंक ऑफ इंडिया, १२१/
१२२ खारेल नगर, प्रथम तल, यूनिट ३, स्टेशन बैंक,
भुवनेश्वर-७५१००१

सहायक महा प्रबंधक, अंचल कार्यालय, यूनियन बैंक ऑफ इंडिया,
नरेमन मिलिंग, प्रथम तल, नरेमन एक्स्प्रेस, एउटे पथ,
पटना-४ ००००१

उप महा प्रबंधक, अंचल कार्यालय, यूनियन बैंक ऑफ इंडिया, चंद्र-
किरण, प्रथम तल, १०-ए, कस्टर्डी रोड, बंगलौर-५६०००१

सहायक महा प्रबंधक, सहायक महा प्रबंधक का कार्यालय, यूनियन बैंक
ऑफ इंडिया, लता कॉम्प्लेक्स, दूसरा तल, "जसबाग" नामाल्ली,
हेवराबाद-५००००१

उप महा प्रबंधक, अंचल कार्यालय, यूनियन बैंक ऑफ इंडिया, १३९,
ब्राह्मे, मद्रास-६०००१८

क्षेत्रीय प्रबंधक, क्षेत्रीय कार्यालय, यूनियन बैंक ऑफ इंडिया, एम..
जी. रोड, निवेद्म-६९५००१

यूनियन बैंक ऑफ इंडिया के या उसके द्वारा या उसकी ओर से
पट्टे पर हरियाणा, पंजाब, जम्मू और कश्मीर हिमाचल प्रदेश
तथा वंव राज्य क्षेत्र दिल्ली में लिए गए परिसर।

प्रृथिव्य बैंक ऑफ इंडिया के या उपके द्वारा या उसकी ओर से
पट्टे पर राजस्थान के सभी राज्यों में लिए गए परिसर।

यूनियन बैंक ऑफ इंडिया के अथवा उसके द्वारा अथवा उसकी
ओर से पट्टे पर भूतपूर्व प्रदेश के सभी जिलों में लिए गए
परिसर।

यूनियन बैंक ऑफ इंडिया के अथवा उसके द्वारा अथवा उसकी ओर
से पट्टे पर उत्तर प्रदेश के सभी जिलों में लिए गए परिसर।

यूनियन बैंक ऑफ इंडिया के अथवा उसके द्वारा अथवा उसकी
ओर से पट्टे पर पश्चिम बंगाल के सभी जिलों में लिए गए परिसर।

यूनियन बैंक ऑफ इंडिया के अथवा उसके द्वारा अथवा उसकी
ओर से पट्टे पर असम, त्रिपुरा, मेघालय के सभी जिलों में
लिए गए परिसर।

यूनियन बैंक ऑफ इंडिया के अथवा उसके द्वारा अथवा उसकी
ओर से पट्टे पर उड़ीसा के सभी जिलों में लिए गए परिसर।

यूनियन बैंक ऑफ इंडिया के अथवा उसके द्वारा अथवा उसकी
ओर से पट्टे पर बिहार के सभी जिलों में लिए गए परिसर।

यूनियन बैंक ऑफ इंडिया के अथवा उसके द्वारा अथवा उसकी
ओर से पट्टे पर कर्नाटक के सभी जिलों में लिए गए परिसर।

यूनियन बैंक ऑफ इंडिया के अथवा उसके द्वारा अथवा उसकी
ओर से पट्टे पर तमिलनाडु और संघ राज्य क्षेत्र पांडिचेरी के
सभी जिले में लिए गए परिसर।

यूनियन बैंक ऑफ इंडिया के अथवा उसके द्वारा अथवा उसकी
ओर से पट्टे पर केरल के सभी जिलों में लिए गए परिसर।

New Delhi, the 25th August, 1992

S.O. 2364 :—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Economic Affairs (Banking Division), No. S.O. 2186, dated the 12th June, 1975 published in the Gazette of India, Part II, section 3, sub-section (ii), dated the 12th July, 1975 except as respects things done or omitted to be done before such supersession, the Central Government hereby appoints the officers mentioned in column (1) of the Table below, being officers equivalent to the rank of gazetted officers of Government, to be estate officers for the purposes of the said Act, who shall exercise the powers conferred and perform the duties imposed on the estate officers by or under the said Act, within the local limits of their respective jurisdiction in respect of the public premises specified in column (2) of the said Table:—

| Designation of the Officer | Categories of Public Premises and local limits of jurisdiction |
|--|--|
| 1 | 2 |
| Deputy General Manager, Metropolitan Bombay Zone, Union Bank of India, 239, Vidhan Bhavan Marg, Nariman Point, Bombay-400021. | Premises belonging to or taken on lease by or on behalf of the Union Bank of India in Greater Bombay and Thane region. |
| Deputy General Manager, Zonal Office Union Bank of India, Jeevan Prakash, 6/7 L.I.C. Building, Shivaji Nagar, Pune, 411005. | Premises belonging to or taken or on lease by or on behalf of the Union Bank of India in all districts in the State of Maharashtra (other than Greater Bombay & Thane region) & Goa. |
| Deputy General Manager, Zonal Office, Union Bank of India, 172/1 High Court Way, Ashram Road, Ahmedabad-380009. | Premises belonging to or taken on lease by or on behalf of the Union Bank of India in all the districts in the State of Gujarat. |
| Regional Manager, Regional Office, Union Bank of India, Shivam Chambers, Varachha Road, Khand Bazar, Surat-395000. | Premises belonging to or taken on lease by or on behalf of the Union Bank of India in the Union Territory of Daman. |
| Regional Manager, Regional Office, Union of Bank India, 1, Jagannath Plot, 1st Floor, Radia Building, Dr. Yagnik Road, Rajkot-360001. | Premises belong to or taken on lease by or on behalf of the Union Bank of India in the Union Territory of Diu. |
| Deputy General Manager, Zonal Office, Union Bank of India, 26/28 D, Connaught Place, New Delhi-110001. | Premises belonging to or taken on lease by or on behalf of the Union Bank of India in the State of Haryana, Punjab, Jammu & Kashmir, Himachal Pradesh & Union Territory of Delhi. |
| Regional Manager, Regional Office, Union Bank of India, S.D.M. Hospital Premises, Bhavani Singh Marg, Bapunagar, Jaipur-302015 | Premises belonging to or taken on lease by or on behalf of the Union Bank of India in all the districts in the State of Rajasthan. |
| Deputy General Manager, Zonal Office, Union Bank of India, Gangotri Complex, 1st Floor, Bhadbada Road, T.T. Nagar, Bhopal-462003. | Premises belonging to or taken on lease by or on behalf of the Union Bank of India in all the districts in the State of Madhya Pradesh. |
| Deputy General Manager, Union Bank of India, Hotel Clark, Avadh, 8, Mahatma Gandhi Marg, Lucknow-226001. | Premises belonging to or taken on lease by or on behalf of the Union Bank of India in all the districts in the State of Uttar Pradesh. |
| Deputy General Manager, Zonal Office, Union Bank of India, Alipore Court, 1st floor, 225 C, Acharya J.C. Bose Road, Calcutta-700020 (W.B.) | Premises belonging to or taken on lease by or on behalf of the Union Bank of India in all the districts in the State of West Bengal. |
| Regional Manager, Regional Office, Union Bank of India, G.N.B. Road, Chandmari, Gauhati-781003. | Premises belonging to or taken on lease by or on behalf of the Union Bank of India in all the districts in the State of Assam, Tripura, Meghalaya. |

**Regional Manager, Regional Office, Union Bank of India,
121/122, Kharvel Nagar, 1st Floor, Bhubaneshwar-751001.**

**Assistant General Manager, Regional Office,
Union Bank of India, Nasheman Building, 1st Floor,
Nasheman Maxhrul Hawue Path, Patna-800001.**

**Deputy General Manager, Zonal Office, Union Bank of
India, Chandrakiran, 1st Floor, 10-A, Kasturba Road,
Bangalore-560001.**

**Assistant General Manager, Assistant General Manager's
Office, Union Bank of India, Lata Complex, 2nd Floor,
'JUSBAHG', Nampally, Hyderabad-500 001.**

**Deputy General Manager, Zonal Office,
Union Bank of India, 139, Broadway, Madras-600 018.**

**Regional Manager, Regional Office,
Union Bank of India, M.G. Road, Trivandrum-695001.**

Premises belonging to or taken on lease by or on behalf of the Union Bank of India in all the districts in the State of Orissa.

Premises belonging to or taken on lease by or on behalf of the Union Bank of India in all the districts in the State of Bihar.

Premises belonging to or taken on lease by or on behalf of the Union Bank of India in all the districts in the State of Karnataka.

Premises belonging to or taken on lease by or on behalf of the Union Bank of India in all the districts of the State of Andhra Pradesh.

Premises belonging to or taken on lease by or on behalf of the Union Bank of India in all the districts in the State of Tamil Nadu and in the Union Territory of Pondicherry.

Premises belonging to or taken on lease by or on behalf of the Union Bank of India in all districts in the State of Kerala.

[No. 15/7/91-B.O.-III]

K.K. MANGAL, Under Secy.

आयकर आयुक्त का कार्यालय

कलकत्ता, 15 जून, 1992

अधिसूचना संख्या 1/1992-93

नई दिल्ली, 1 सितम्बर, 1992

का.आ. 2365:-केन्द्रीय सरकार, औद्योगिक वित्त निगम अधिनियम, 1948 (1948 का 15) की धारा 21 की उपधारा (2) के अनुसरण में, भारतीय औद्योगिक वित्त निगम के निवेशक बोर्ड की सिफारिश पर उक्त निगम द्वारा 14 सितम्बर, 1992 को जारी किए जाने वाले तथा 14 सितम्बर, 2007 को परिवर्त्य होने वाले बोर्डों पर देय व्याज की दर एवं द्वारा 13% (तेरह प्रतिशत) वार्षिक निर्धारित करती है।

[का. सं. 2(15)/92-आई.एफ. I]

एच. एस. कुमार, निवेशक

New Delhi, the 1st September, 1992

S.O. 2365.—In pursuance of sub-section 2 of Section 21 of the Industrial Finance Corporation Act, 1948 (15 of 1948), the Central Government on the recommendation of the Board of Directors of the Industrial Finance Corporation of India, hereby fixes 13% (Thirteen percent) per annum as the rate of interest payable on the bonds to be issued by the said Corporation on 14th September, 1992 and maturing on 14th September, 2007.

[F. No. 2(15)/92-IF.I]

H. S. KUMAR, Director

का.आ. 2366 आयकर अधिनियम, 1961 (1961 का 43) की धारा 120 की उप-धारा (1) व (2) के अधीन प्रदत्त शक्तियों के अनुसार तथा इस दिना में सक्षम बनाने वाली अन्य शक्तियों का प्रयोग करते हुए, मैं, आयकर आयुक्त पश्चिम बंगाल-8, कलकत्ता एवं द्वारा, आयकर उपायुक्त, रेञ्ज-10, रेञ्ज-13, रेञ्ज-15, कलकत्ता के क्षेत्राधिकार तथा प्रशासनिक नियंत्रण में क्रमाः (1) नवे निर्धारिती संकेत-10 (1) कलकत्ता (2) नवे निर्धारिती संकेत-13(1), कलकत्ता (3) नवे निर्धारिती संकेत-15(1), कलकत्ता के रूप में तीन (3), नए प्रभारों का सूजन करता हूँ।

उपर्युक्त आयकर प्राधिकारी इस अधिसूचना के तहत अपने कार्यों का निष्पादन करेंगे बताते कि इसके उपरान्त उपरोक्त अधिनियम की धारा 127 वा धारा 120 के अन्तर्गत मेरे द्वारा कोई निदेश/आदेश जारी हो।

यह आदेश 15-6-1992 से लागू होगा।

[का. सं. क्ष. /प. ब. -8/92-93]

एस. सी. सम्पेना, आयकर आयुक्त

OFFICE OF THE COMMISSIONER OF INCOME-TAX
Calcutta, the 15th June, 1992
NOTIFICATION NO. 1/1992-93

S.O. 2366.—In exercise of the powers conferred on me under sub-sections (1) & (2) of Section 120 of Income Tax Act, 1961 (43 of 1961) and all other powers enabling me in this behalf, I, the Commissioner of Income Tax, West Bengal-VIII, Calcutta, hereby, create three (3) new charges to be known as (1) New Assessee's Circle-10(1), Cal. (2) New Assessee's Circle 13(1), Cal., (3) New Assessee's Cir. 15(1), Calcutta, under the jurisdiction and administrative control of Dy. Commissioner of Income Tax, Range-10, Range-13, Range-15, Calcutta respectively, under this Charge.

Provided that the aforesaid Income Tax Authority shall perform their functions under this notification subject to any direction/order that may hereafter be issued by me U/s. 120 or U/s. 127 of the said Act.

This order will take effect from 15th June, 1992.

[F. No. Jur/WB-VIII/92-93]
S. C. SAXENA, C.I.T.

वाणिज्य मंत्रालय

नई दिल्ली, 26 अगस्त, 1992

का.आ. 2367.—निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार अधिसूचना स.का.आ. 1614 तारीख 3 जून, 1992 में रूपान्तर करते हुए डा. जी. मुन्द्ररम, अपर सचिव, वाणिज्य मंत्रालय की श्री वी. एस. बैंकटरामन के स्थान पर निर्यात निरीक्षण परिषष्ठ का एनड्हारा तुरन्त अध्ययन नियुक्त करती है।

[फाईल सं. 3/90/8 5-ई आई एण्ड ईपी]
कुमारी सुमा सुब्बन्ना, निदेशक

MINISTRY OF COMMERCE

New Delhi, the 26th August, 1992

S.O. 2367.—In exercise of the powers conferred by section 3 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with Rule 3 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government, in modification of Notification S.O. No. 1614 dated 3 June, 1992, hereby appoints Dr. G. Sundaram, Additional Secretary, Ministry of Commerce as Chairman of the Export Inspection Council with immediate effect, vice Shri V. S. Venkataraman.

[File No. 3/90/85-EI&EP]
KUMARI SUMA SUBBANNA, Director

वस्त्र मंत्रालय

नई दिल्ली, 13 अगस्त, 1992

का.आ. 2368.—केन्द्रीय सरकार, राजभाषा संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में वस्त्र मंत्रालय के अन्तर्गत आने वाली निम्नलिखित कार्यालयों को जिनमें 80 प्रतिशत कर्मचारी बृन्द ने हिन्दी का कार्य साधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:—

1. केन्द्रीय रेशम उत्पादन अनुसंधान केन्द्र।
केन्द्रीय रेशम बोर्ड, गंगी-834005 (बिहार)
2. केन्द्रीय तसर प्रान्तिकान केन्द्र, केन्द्रीय रेशम बोर्ड,
भीमताल-263136
नैनीताल (उ.प्र.)

[सं. ई-11011/18/89-हिन्दी]
कौरति कुमार, उप सचिव

MINISTRY OF TEXTILES
New Delhi, the 13th August, 1992

S.O. 2368.—In pursuance of Sub-Rule 4 of Rule 10 of the Official Language (Use for Official Purposes of the Union), Rules, 1976 the Central Government hereby notifies the following offices under the Ministry of Textiles whereof more than 80% staff have acquired working knowledge of Hindi:

1. Regional Sericulture Research Centre, Central Silk Board, Ranchi-834005.
2. Regional Tasar Research Centre, Central Silk Board, Bhimtal-263136 Nainital (U.P.).

[No. E-11011/18/89-Hindi]

KIRTHY KUMAR, Dy. Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

नई दिल्ली, 19 अगस्त 1992

का.आ. 2369.—केन्द्रीय सरकार, होम्योपैथी केन्द्रीय परिषद् अधिनियम, 1973 (1973 का 59) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए, भारत सरकार के तत्कालीन स्वास्थ्य और परिवार नियोजन मंत्रालय (स्वास्थ्य विभाग) की अधिसूचना संस्था का.आ. 482(ग्र) तारीख 6 अगस्त, 1974 में निम्नलिखित संशोधन करती है, अर्थात्:—

उक्त अधिसूचना की सारणी में, “धारा 3 की उपधारा (1) के खंड (घ) के अंतर्गत निर्वाचन” शब्दक के अंतर्गत कम संख्यांक 19 और उससे संबंधित प्रविधियों के पश्चात् निम्नलिखित कम संख्याक और प्रविधियाँ अंतःस्पापित की जाएगी, अर्थात्:—

1

2

“20 डा. एस.एस. पटेल, डीन, सरवार पटेल विश्वविद्यालय”
होम्योपैथी, संकाय, सरवार पटेल
विश्वविद्यालय, पोस्ट बाक्स संख्या
10, बल्सम विद्या नगर-388120
(गुजरात)

[सं. वी. 26018/15/87-होम्यो. (सोसी एच)]
राज किशोर मुख्य, निदेशक, (भा. चि. पा.)

MINISTRY OF HEALTH & FAMILY WELFARE

New Delhi, the 19th August, 1992

S.O. 2369.—In exercise of the powers conferred by sub-section (1) of section 3 of the Homoeopathy Central Council Act, 1973 (59 of 1973), the Central Government hereby makes the following amendments in the notification of the Government of India in the erstwhile Ministry of Health and Family Planning (Department of Health) S.O. 482(E), dated the 6th August, 1974, namely :—

In the Table to the said notification, under the heading “Elected under clause (b) of sub-section (1) of section 3%, after serial number 19 and the entries relating thereto, the following serial number and entries shall be inserted, namely :—

| (1) | (2) |
|--|--------------------------|
| “20 Dr. S. S. Patel, Dean, Faculty of Homoeopathy, Sardar Patel University, P.B. No. 10, Vallabh Vidyanagar-388120 (Gujarat) | Sardar Patel University” |

[No. V. 26018/15/87-Homoeo (CCH)]
R. K. MUKHI, Director (ISM)

शहरी विकास मंत्रालय
अधिसूचना
नई दिल्ली, 1 सितम्बर, 1992

का. आ. 2370.—यतः इस समय प्रकाशन विभाग दिल्ली के प्रकाशन उप-नियंत्रक (प्रशासन) उक्त विभाग के ग्रुप “ग” के कतिपय पदों और ग्रुप “घ” पदों के लिए अनुशासनात्मक प्राधिकारी है।

और यतः प्रकाशन विभाग से उप-नियंत्रक (प्रशासन) का पद इन समय रिक्त पड़ा है और अ नुशासनात्मक भागलों को नियोजन के लिए अनुशासनात्मक प्राधिकारी की अनुपस्थिति में वहुत कठिनाइयां मझसूस की जा रही है।

अब यतः वेद्यालय सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियमावली, 1965 के नियम 12 के उपनियम (2) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राष्ट्रपति एवं द्वारा शहरी विकास मंत्रालय के अवर सचिव (लेखन सामग्री और मुद्रण) को प्रकाशन विभाग में इन ग्रुप “ग” और ग्रुप “घ” पदों के पद धारकों जिनके लिए प्रकाशन विभाग के उपनियंत्रक (प्रशासन) नियुक्त प्राधिकारी है, को उक्त नियमावली के नियम -11 में विनियोग कोई भी दंड लगाने के लिए सक्षम अनुशासनात्मक प्राधिकारी के रूप में नियुक्त करते हैं।

[सं. सी०-31011/1/89-वी बी इन]
टी. जोसफ, डैस्क अधिकारी

MINISTRY OF URBAN DEVELOPMENT

New Delhi, the 1st September, 1992

S.O. 2370.—Whereas the Deputy Controller of Publication (Administration) Department of Publication, Delhi is at present the Disciplinary Authority for certain Group ‘C’ posts and Group ‘D’ posts in that Department.

And WHEREAS the post of Deputy Controller (Administration) Department of Publication is at present lying vacant and lot of difficulties are being experienced in the absence of the Disciplinary Authority for settling the disciplinary cases.

Now, therefore, the President, in exercise of the powers conferred by clause (b) of sub-rule (2) of rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby appoints the Under Secretary (Stationery and Printing) Ministry of Urban Development as the Disciplinary Authority competent to impose any of the penalties specified in Rule 11 of the said rules on the employees holding these Group ‘C’ and Group ‘D’ posts in the Department of Publication for which Deputy Controller (Administration), Department of Publication is the Appointing Authority.

[No. C-31011/1/89-PBN]

T. JOSEPH, Desk Officer

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 12 अगस्त, 1992

का. आ. 2371.—चलचित्र (प्रमाणन) नियमावली, 1983 के नियम 9 के माध्यम परिवर्तन चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्रीय सरकार श्री डॉ. कैलाल प्रसाद, (आई.पी.ओ.एस. : 71) को केंद्रीय फिल्म प्रमाणन बोर्ड हैदराबाद में 22-7-92 (पूर्वाह्न) से अगले आदेश होने तक केंद्रीय प्रतिनियुक्ति की घोरों पर प्रादेशिक अधिकारी नियुक्त कारती है, उनका स्तर नियेक का होगा जो कि केवल इन्हों के लिए होगा।

[फाइल संख्या 801/9/89-एफ. (सी)]

एम. एस. सेठी, डैस्क अधिकारी

MINISTRY OF INFORMATION & BROADCASTING

New Delhi, the 12th August, 1992

S.O. 2371.—In exercise of the powers conferred by sub-section (2) of Section 3 of the Cinematograph Act, 1952 (37 of 1952), read with Rule 9 of the Cinematograph (Certification) Rules 1983, the Central Government is pleased to appoint Shri D. Kailasa Prasad, (IPOS : 71) as Regional Officer, Central Board of Film Certification, Hyderabad, at the level of Director as a measure personal to him, on Central deputation terms, w.e.f. 22-7-92 (FN) until further orders.

[F. No. 801/9/89-F(C)]

M. S. SETHI, Desk Officer

संचार मंत्रालय

(डाक विभाग)

नई दिल्ली, 25 अगस्त, 1992

का. आ. 2372.—राजभाषा नियम, (संघ के शासकीय प्रयोजनों के लिए प्रयोग) 1976 के नियम 10 के उप-नियम (4) के अनुसरण में केंद्र सरकार, डाक विभाग के निम्न-लिखित ग्रन्तीत्य कार्यालयों को, जिनके 80 प्रतिशत कर्म-

वारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है,
अधिसूचित करती है:—

1. अधीक्षक डाकघर,
बनासकांठा मंडल
पालनपुर-385002
2. अधीक्षक डाकघर
सुरेन्द्र नगर मंडल
सुरेन्द्रनगर
3. अधीक्षक डाक बस्तु भंडार
शहीबाग, अहमदाबाद
4. प्रबर अधीक्षक रेल डाक सेवा
“ए एम” मंडल, अहमदाबाद
5. प्रबर अधीक्षक डाकघर,
नवसारी मंडल, नवसारी
6. अधीक्षक रेल डाक सेवा
“एस. आर.” मंडल सूरत
7. अधीक्षक डाकघर
वारडोली मंडल, वारडोली
8. प्रबन्धक, डाक मोटर सेवा
अहमदाबाद-380001
9. अधीक्षक डाकघर
कच्छ मंडल, भुज
10. प्रबर अधीक्षक
रेल डाक सेवा, “डब्ल्यू” मंडल-
વडोदरा

[सं. ई.-11017/1/92—रा. भा.]
जा. गिरिवरधारी सिंह, निदेशक (राजभाषा)

MINISTRY OF COMMUNICATIONS

(Department of Posts)

New Delhi, the 25th August, 1992

S.O. 2372.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (use for official purposes of the Union) Rules, 1976 the Central Government hereby notify the following offices of the Department of Posts where 80 per cent staff had acquired the working knowledge of Hindi.

S. No. Name of the office

1. Superintendent of Post offices,
Banaskantha Division
Palanpur-385002
2. Superintendent of Post offices,
Suredranagar Division
Surendranagar
3. Superintendent
Postal Stores Depot,
Shahibagh
Ahmedabad

4. Sr. Superintendent

R.M.S.
A.M. Division
Ahmedabad

5. Sr. Superintendent

of Post offices,
Navsari Division
Navsari

6. Superintendent

R.M.S.
S. R. Division
Surat

7. Superintendent of

Post offices,
Bardolai Division
Bardolai

8. Manager,

Mail Motor Service,
Ahmedabad-3800 01

9. Superintendent of

Post offices,
Kutch Division,
Bhuj

10. S. Superintendent

Railway Mail Service
'W' Division
Vadodara

[No. E-11017-1/92-O.L.]

DR. G. D. SINGH, Director O.L.

अम मंत्रालय

नई विस्ती, 17 अगस्त 1992

का०आ० 2373 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की घारा 17 के अनुसरण में, केन्द्रीय सरकार टाटा आयरन एण्ड स्टील कं. लिमिटेड, जमशेषपुर टाटा (बिहार) के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के द्वीप अमुंदं में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, ओडिशा (भुवनेश्वर), के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-8-93 को प्राप्त हुआ था।

[संख्या एल-26011/5/91 आईआर (बिविध)]

के०वी०वी० उन्नी, ईस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 17th August, 1992

S.O. 2373.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (Orissa) Bhubaneswar as shown in the

Annexure in the Industrial Dispute between the employers in relation to the management of Tata Iron & Steel Co. Limited, Jamshedpur (Bihar) and their workmen, which was received by the Central Government on the 13th August, 1992.

[No. L-26011/5/91-IR(Misc)]
K. V. B. UNNY, Desk Officer

ANNEXURE

INDUSTRIAL TRIBUNAL : ORISSA : BHUBANESWAR
Present :

Sri R. K. Dash, LL.B., Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 19 OF 1991 (CENTRAL)

Dated, Bhubaneswar, the 4th August, 1992

BETWEEN

The Management of Prospecting Division, Tata Iron and Steel Company Limited, At/P.O. Joda, Dist : Keonjhar. —First Party-management

AND

Their workmen, namely,
S/Sri

- (1) Bipin Naik, s/o : Natoram Naik,
- (2) Arjun Charan Barik, s/o : Narottam Barik,
- (3) Dayanidhi Barik, s/o : Dhania Barik,
- (4) Raghunath Khandayat, s/o : Satuni Khandayat,
- (5) Rani Chandra Mahakud, s/o : Gobardhan Mahakud,
- (6) Muralidhar Barik, s/o : Saktu Barik,
- (7) Jugal Mahakud, s/o : Bhagirathi Mahakud,
- (8) Nehura Purty, s/o Saluka Purty,
- (9) Makru Bagth, s/o : Rabi Bagty,
- (10) Kumar Majhi, s/o : Gandharji Majhi,
- (11) Rabindra Munda, s/o : Birsingh Munda,
- (12) Dabra Hembram, s/o : Manki Hembram
- (13) Padmalav Barik, s/o : Nidhi Barik,
- (14) Gura Karua, s/o : Basdhani Karua,
- (15) Bikram Munda, s/o : Sunaram Munda,
- (16) Kurti Barik, s/o : Damradhbar Barik,
- (17) Jugamani Barik, s/o : Raghunath Barik,
- (18) Benudhar Barik, s/o : Dhakta Barik,
- (19) Dhaneswar Majhi,
- (20) Kuna Munda.

Appearances :

Sri S. N. Acharya,—For the First Party.
Dy. Chief Personnel Manager (Mines) Management.
For the second party—The workmen themselves.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred upon them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute for adjudication by this Tribunal :—

"Whether the demand of the North Orissa Workers' Union, Rourkela-12, Dist : Sundergarh for regularisation in employment of Sri Bipin Naik and 19 others by the management of Sr. Geologist (E), Joda, Prospecting Division, Tata Iron & Steel Company Limited, Joda, Dist. Keonjhar as against the illegal termination of services of such workmen w.e.f. 10th August '90 and thereafter during the

2185 GI/92—2

pendency of the conciliation proceeding giving employment to these workmen from 3-11-90 for a specific period is lawful ? If so, to what relief the workmen are entitled ?"

2. Parties have filed memorandum of settlements on different dates and prayed to pass an award in terms of such settlements arrived at between them. All the workmen appeared personally and submitted that they have settled the dispute out of court in the interest of industrial peace and harmony. The terms of settlements were readover and explained to the parties to which they admitted to be true and correct. The settlement being fair is recorded. Accordingly, an award is passed in terms of the settlement. The memorandum of settlements filed on 27-12-91, 23-1-92 and 20-5-92 do form part of the Award.

Dictated & corrected by me.

R. K. DASH, Presiding Officer

FORM—H

(Under Rule 58 of the Industrial Disputes (Central) Rule, 1957)

MEMORANDUM OF SETTLEMENT DT. 25-9-1991 BETWEEN

Representing Employers

1. Sri A. W. Pradhan, Chief of Geological Services Tisco Limited, Jamshedpur
2. Sri A. K. Mukhopadhyay, Sr. Geologist, Tisco Limited, Joda

Representing Workman

1. Sri G.S.P. Sinha Vice President, Tata Workers' Union Jamshedpur
2. Sri S. P. Bose, Union representative Tata Workers' Union, Outdoor Geological

SHORT RECITAL OF THE CASE

The Geological Services Department of TISCO, Jamshedpur had taken up prospecting project jobs at Bamebari and Joribar in the district of Keonjhar, Orissa.

In the said prospecting operation, number of workmen had been engaged on purely temporary basis for different and specific spells of contractual engagements depending upon the work requirement of the said projects. On conclusion of the said project works, the establishment of prospecting projects were wound up and consequently, the contractual services of the workmen stood automatically terminated.

Forty two workmen, as per list appended here to as Enclosure I, raised industrial disputes through the North Orissa Workers' Union and the said disputes after unsuccessful conciliation have been referred to be Hon'ble Industrial Tribunal, Orissa, Bhubaneswar by Government of India, Ministry of Labour's Order No. L-26011/4/91-IR (Misc.) dated 26/30-4-91 and Order No. L-26011/5/91-IR (Misc.) of 29-4-91 wherein the schedule of the disputes referred for adjudication are respectively in the following terms :

"Whether the demand of the North Orissa Workers' Union, Rourkela, 12, Dist. Sundergarh for regularisation in employment of Shri Mitra Barik and 21 others (list enclosed) by the management of Superintendent, Geological Department (Mines Division), Tata Iron & Steel Company Limited, Jamshedpur at Bamebari area, Joda in the district Keonjhar (Orissa) is lawful and justified ? If so, to what relief the workmen are entitled to ?"

"Whether the demand of the North Orissa Workers' Union, Rourkela-12, district—Sundergarh for regularisation in employment of Shri Bipin Naik and 19 others (list enclosed) by the management of Sr. Geologist (E), Joda, Prospecting Division, Tata Iron and Steel Company Limited, Joda, district—Keonjhar as against the illegal termination of service of such workmen w.e.f. 10th August, 1990 and thereafter during the pendency of the conciliation proceedings giving employment to those workmen from 3-11-90 for a specific period is lawful? If so, to what relief the workmen are entitled to?"

The first, order of reference has been registered as I. D. Case No. 17/91(C) while the second order of reference has been registered as I. D. Case No. 19/91 (C) in the file of the Industrial Tribunal, Orissa, Bhubaneswar.

During the pendency of the above two cases, before the Industrial Tribunal, some of the workmen in both the disputes totalling to 17 in number took support from Tata Workers' Union, Registered No. INTUC—55 which is the recognised Union in the Industry, for an early amicable, fair and all round settlement of their disputes and to avoid protracted litigation in the Tribunal and in higher Courts. The Tata Workers' Union espoused the cause of the said workmen before the Management and after prolonged discussions with an attitude of give and take and with an earnestness of resolving the disputes fully and finally, including on all matters incidental to and connected with the said disputes, the parties having succeeded in arriving at an all-out composition of the disputes and differences, the terms of such composition are as set out hereunder.

TERMS OF SETTLEMENT

(I) In consideration of the fact that these 17 workmen (enclose IA) had worked intermittent spells, the management agrees to offer regular employment to them on terms and conditions as set out in the specimen copy of appointment offer contained in Enclosure-II to this settlement. The workmen shall be taken into employment on signing the said offer of employment which they agree to do within a period of seven days of receipt of such offer and shall be posted at such place or places as per the work requirement of the department. Their employment under the Company in the Geological Services Department will commence from the date of their reporting to duty.

(II) It is agreed that in view of the said offer of regular employment to these workmen, their disputes as pending in the Hon'ble Industrial Tribunal in I.D. Case No. 17 of 1991

(C) and I.D. Case No. 19/91 (C) shall be deemed to have been fully and finally settled and that there shall be no claim, other or further claim or dispute existing or any time apprehended in the matter of the said disputes or on any matter connected therewith or incidental thereto. It is also made clear that there shall be no claim of any sort in respect of their employment, non-employment or conditions of service in respect of their past temporary/casual employment with the Company.

(III) It is agreed that the disputes pending adjudication in the aforesaid I. D. Cases having been amicably and fully settled, the parties to the settlement shall jointly and/or severally file appropriate petition before the Hon'ble Tribunal for kindly taking note of the compromise of the dispute as per the terms of the statement and to pass an award in terms of the said settlement.

(IV) The parties understand and accept this compromise as fair and amicable and in their best mutual interest.

SIGNATURE OF THE PARTIES

For the employer :

1. A. W. Pradhan,
Chief of the Geological Services Tisco Limited, Jamshedpur
2. A. K. Mukhopadhyay
Sr. Geologist (E)
Tisco Limited, Joda

For the Workmen :

1. G. S. P. Sinha,
Vice President
Tata Worker's Union,
Jamshedpur
2. S. P. Bose,
Union representative
Tata Workers' Union,
Outdoor Geological

Witness with addresses :

1. (P. S. Rao) K. Road, Jamshedpur.
2. (M. Z. M. Ansary) Goel, Deptt. Jamshedpur.

LIST OF 42 WORKMEN WHO HAVE RAISED INDUSTRIAL DISPUTE

| | |
|-----------------------------|-----------------------------|
| 1. Sri Mitra Barik | 1. Sri Bipin Naik |
| 2. Shri Laxman Barik | 2. Shri Arjun ch. Barik |
| 3. Shri Kalakar Barik | 3. Shri Dayanidhi Barik |
| 4. Shri Nilamani Barik | 4. Shri Raghunath Khandayat |
| 5. Shri Gour Ch. Mahant | 5. Shri Ram Chandra Mahakud |
| 6. Shri Promod Barik | 6. Shri Muralidhar Barik |
| 7. Shri Maika Munda | 7. Shri Jugal Mahakud |
| 8. Shri Narasingh Lohar | 8. Shri Mehura Purty |
| 9. Shri Chandrashokar Barik | 9. Shri Makru Bagti |
| 10. Shri Mohan Majhi | 10. Shri Kumar Majhi |
| 11. Shri Sukr Karua | 11. Shri Rabindra Munda |
| 12. Shri Bhagirathi Mukhi | 12. Shri Debra Hemaram |
| 13. Shri Ram Chandra Munda | 13. Shri Padmalav Barik |
| 14. Shri Gurucharan Mohakud | 14. Shri Gur. Karua |
| 15. Shri Umakanto Behera | 15. Shri Bikram Munda |
| 16. Shri Lakan Munda | 16. Shri Kurti Barik |

17. Shri Minikram Hessa
18. Sukdeb Lohar
19. Shri Rabindra Nath Mahanto
20. Shri Shiv Ch. Sandil
21. Shri Janam Singh Baipai
22. Shri Paramananda Patra

17. Shri Jugamani Barik
18. Shri Benudhar Barik
19. Shri Dhaneswar Majhi
20. Shri Kuna Munda

LIST OF EMPLOYEES WHO HAVE TAKEN SUPPORT FROM TATA WORKERS UNION

1. Shri Bipin Naik
2. Shri Kumar Majhi
3. Shri Rabindra Munda
4. Shri Kuna Munda
5. Shri Makru Bagti
6. Shri Debra Hembram
7. Shri Raghunath Khandayat
8. Shri Gurc Karua
9. Shri Nehura Purty
10. Shri Paramananda Patra

1. Shri Manikram Hessa
2. Shri Sukadeb Lohar
3. Shri Ram Chandra Munda
4. Shri Sib Charan Sandil
5. Shri Janam Singh Baipai
6. Shri Mika Munda
7. Shri Lakhan Munda

**THE TATA IRON AND STEEL COMPANY LTD.
GEOLOGICAL SERVICES, JAMSHEDPUR**

Ref. No.

Dated :

Dear Sir/Madam :

Pursuant to the settlement dated 25-9-91 signed with the Tata Workers' Union on your behalf you are hereby appointed as Mazdoor in the grade of Rs. 1350-20-1630/- per month on the following terms and conditions :—

1. Your appointment shall be subject to your being found medically fit, for the post, by the Company's authorised Medical Officer(s).
2. Before your appointment you shall have to produce all certificates, testimonials etc. if any, in original in support of your age, academic and other qualifications, experience etc.
3. On appointment you will be paid a basic salary of Rs. 1350/- per month in the above grade along with other admissible allowances.
4. You will be eligible for the admissible perquisites and amenities provided by the Steel Company.
5. You will be on probation for a period of 6 (six) months, should your aptitude for work, performance on the job and conduct be found unsatisfactory, during the above period or extended period of probation, your services may be terminated without giving any notice or pay in lieu of notice.
6. You will be governed by the Company's Certified Standing Orders, provisions of other statutes and Company's Rules and Regulations as are applicable.
7. Your services are transferable and you shall be liable to be transferred to any existing department/establishment of the Company and/or any department/establishment that may be taken over by the Company in future.

8. As long as you will be in the service of the Steel Company you shall not engage yourself in any trade or business or profession without the express permission of the Company.
9. You shall be required to submit a no objection certificate, before employment, from your present employer, if you are in service.
10. For the purpose of free medical treatment, family would mean yourself, spouse, un-married daughters, sons below 21 years of age, father and mother if dependent on you.
11. Before employment you shall have to vacate the Company's quarters which may be under possession of your father/mother/husband/brother.
12. The Steel Company shall not take any responsibility or bear any expenses whatsoever towards your joining duty.

If the above terms and conditions are agreeable to you, you may sign the enclosed copy of this letter in token of your acceptance of the above mentioned clauses of your employment and submit the same to Sr. Geologist (Exploration), TISCO Ltd., Joda and report to him by.

Yours faithfully,

: THE TATA IRON AND STEEL COMPANY LTD.
CHIEF OF GEOLOGICAL SERVICES
JAMSHEDPUR

ANNEXURE

BEFORE THE PRESIDING OFFICER : INDUSTRIAL
TRIBUNAL ORISSA, BHUBANESWAR
I.D. Case No. 19/91 (C)

BETWEEN

Senior Geologist (E) Tata Iron & Steel Co. Ltd. At/
P.O. Jeda, Dist : Keonjhar Orissa ...1st Party

AND

Their workmen (Bipin Naik & 19 others) ...2nd Party
IN THE MATTER OF :

A petition for Compromise/Composition of the dispute in respect of S/Sri Raghunath Khandayat

Nehru Purty
Rabindra Munda
Bikram Munda
Kuna Munda
Benudhar Barik

The humble joint petition of compromise by and between the parties most respectfully sheweth :

1. That the Industrial Dispute for adjudication in the present case is as follows :

"Whether the demand of the North Orissa Workers' Union, Rourkela-12, Dist : Sundargarh for regularisation in employment of Bipin Naik and 19 others (list enclosed) by the Management of Sr. Geologist (E), Joda Prospecting Division, TISCO Limited, Joda, Dist : Keonjhar as against the illegal termination of service with effect from 10-8-1990 and thereafter during the pendency of the conciliation proceedings giving employment to these workmen from 3-11-1990 for specific period is lawful ? If so, to what relief the workmen are entitled to ?"

2. That in the meantime the 2nd party, workmen and the 1st party, management has an amicable, fair and all-round composition of disputes mentioned above. The matter was discussed and deliberated by and between the parties for quite sometime and finally it has been unanimously agreed by and between the parties to the disputes that the disputes in respect of the following workmen would be composed fairly and fully.

1. Sri Raghunath Khandayat
2. Sri Nehru Purty
3. Sri Rabindra Munda
4. Sri Bikram Munda
5. Sri Kuna Munda
6. Sri Benudhar Barik

Terms of compromise

1. In consideration of the fact that these workmen had worked intermittent spells, the management agrees to offer regular employment to them on the terms and conditions as set out in the specimen copy of appointment offer contained in enclosure-1 to this settlement. The workmen shall be taken into employment on signing on the offer of employment within a period of 7 days of receipt of such offer and shall be posted at such place or places as per the work requirement of the department. Their employment in the Company under Geological Services Department will commence from the date of their reporting for duty.

2. It is agreed that in view of the said offer of employment to these workmen their disputes as pending in the Hon'ble Industrial Tribunal in I. D. Case No. 19 of 1991 (C) shall be deemed to have been fully and finally settled and that there shall be no claim other or further claim or dispute existing or at any time apprehended in the matter of said dispute or in any matter connected therewith or incidental thereto. It is also made clear that there shall be no claim of any sort in respect of their employment, non-employment or conditions of service in respect of their past temporary/casual employment with the Company.

3. It is agreed that the disputes pending adjudication in the aforesaid industrial dispute case having been amicably and fully settled, the parties to the settlement file this petition before the Hon'ble Tribunal for kindly taking note of the compromise of the dispute as per the terms of compromise and to pass an award in terms of the same.

PRAYER

In the circumstances, the parties, as aforementioned, fervently pray that the settlement composing their dispute, fully, fairly and finally, may kindly be accepted and an award in respect of the said dispute may kindly be passed by the Hon'ble Tribunal in terms of the compromise and their names may be expunged from the continuance of this case and/or such other or further orders as may be considered fit and proper by the Hon'ble Tribunal may kindly be passed.

By the First Party
through

authorised representative
Deputy Chief Personnel Manager
Tata Iron & Steel Co. Ltd.

By the Second Party

1. Sri Raghunath Khandayat
2. Sri Nehru Purty
3. Sri Rabindra Munda
4. Sri Bikram Munda
5. Sri Kuna Munda
6. Sri Benudhar Barik

Bhubaneswar

Dated : 20-1-92

THE TATA IRON & STEEL CO. LTD.
GEOLOGICAL SERVICES : JAMSHEDPUR

Ref. No. / Dated :

Dear Sir/Madam,

Pursuant to the joint compromise petition dated 20-1-92 filed before the Industrial Tribunal Orissa, Bhubaneswar hereby appointed as Mazdoor in the grade of Rs. 1350-20-1630/- per month on the following terms and conditions :—

1. Your appointment shall be subject to your being found medically fit, for the post, by the Company's authorised Medical Officer(s).
2. Before your appointment you shall have to produce all certificates testimonials etc. if any, in original in support of your age, academic and other qualifications, experience etc.
3. On appointment you will be paid a basic salary of Rs. 1350/- per month in the above grade along other admissible allowance.
4. You will be eligible for the admissible perquisites and amenities provided by the Steel Company.
5. You will be on probation for a period of 6 (six) months, should your aptitude for work, performance on the job and conduct be found unsatisfactory, during the above period or extended period of probation your services may be terminated without giving any notice or pay in lieu of notice.
6. You will be governed by the Company's Certified Standing Orders, provisions of other statutes and Company's Rules and Regulations as are applicable.
7. Your services are transferable and you shall be liable to be transferred to any existing department establishment of the Company and/or any department/establishment that may be taken over by the Company in future.
8. As long as you will be in the service of the Steel Company you shall not engage yourself in any trade or business or profession without the express permission of the Company.

9. You shall be required to submit a no objection certificate, before employment, from your present employer, if you are in service.
10. For the purpose of free medical treatment, family would mean yourself, spouse, un-married daughters, sons below 21 years of age, father and mother if dependent on you.
11. Before employment you shall have to vacate the Company's quarters which may be under possession of your father/mother/husband/brother.
12. The Steel Company shall not take any responsibility or bear any expenses whatsoever towards your joining duty.

If the above terms and conditions are agreeable to you, you may sign the enclosed copy of this letter in token of your acceptance of the above mentioned clauses of your employment and submit the same to Sr. Geologist (Exploration), TISCO Ltd., Joda and report to him by.....

Yours faithfully,
Sd/-

f : THE TATA IRON & STEEL COMPANY LTD.
CHIEF OF GEOLOGICAL SERVICES
JAMSHEDPUR

ANNEXURE

BEFORE THE PRESIDING OFFICER : INDUSTRIAL TRIBUNAL ORISSA : BHUBANESWAR

I. D. CASE NO. 19/91(C)

BETWEEN

The Senior Geologist (E) TISCO Ltd., Joda ...1st Party

AND

Their Workmen (Bipin Naik & 19 others) ...2nd Party

IN THE MATTER OF

A petition for Compromise/Composition of the dispute in respect of S/Sri :

- (1) Arjun Ch. Barik
- (2) Dayanidhi Barik
- (3) Ram Ch. Mohakud
- (4) Muralidhar Barik
- (5) Jugal Mohakud
- (6) Padmalabh Barik
- (7) Kurti Barik
- (8) Jugamani Barik
- (9) Dhaneswar Majhi

The humble petition of compromise by and between the parties most respectfully sheweth :

1. That the Industrial Dispute for adjudication in the present case is as follows :

"Whether the demand of the North Orissa Workers Union Rourkela-12, Dist. : Sundargarh for regularisation in employment of Bipin Naik and 19 others (list enclosed) by the management of Senior Geologist (E), Joda Prospecting Division, TISCO Ltd. Joda, Dist. : Keonjhar as against the illegal termination of service with effect from 10-8-1990 and thereafter during the pendency of the conciliation proceeding giving employment to these workmen from 3-11-1990 for specific period is lawful ? If so to what relief the workmen are entitled to?"

2. That in the meantime the 2nd party, workmen and the 1st party Management has an amicable, fair and all round composition of dispute mentioned above. The matter was discussed and deliberated by and between the parties for quite sometime and finally it has been unanimously agreed by and between the parties to the dispute that the dispute in respect of the following workmen would be composed fairly and fully.

- (1) Arjun Ch. Barik
- (2) Dayanidhi Barik
- (3) Ram Ch. Mohakud
- (4) Muralidhar Barik
- (5) Jugal Mohakud
- (6) Padmalabh Barik
- (7) Kurti Barik
- (8) Jugamani Barik
- (9) Dhaneswar Majhi

Terms of compromise

1. In consideration of the fact that these workmen had worked intermittent spells, the management agrees to offer regular employment to them on the terms and conditions as set out in the specimen copy of the appointment offer contained in enclosure-1 to this settlement. The workmen shall be taken into employment on signing on the offer of employment within a period of 7 days of receipt of such offer and shall be posted at such place or places as per the work requirement of the department. Their employment in the Company under Geological Services Department will commence from the date of their reporting for duty.

2. It is agreed that in view of the said offer of employment to these workmen their disputes as pending in the Hon'ble Industrial Tribunal in I. D. Case No. 19 of 1991(C) shall be deemed to have been fully and finally settled and that there shall be no claim other or further claim or dispute existing or at any time apprehended in the matter of said dispute or in any matter connected therewith or incidental thereto. It is also made clear that there shall be no claim of any sort in respect of their employment, non-employment or conditions of service in respect of their past temporary/casual employment with the Company.

3. It is agreed that the disputes pending adjudication in the aforesaid industrial dispute case having been amicably and fully settled, the parties to the settlement file this petition before the Hon'ble Tribunal for kindly taking note of the compromise of the dispute as per the terms of compromise and to pass an award in terms of the same.

PRAYER

In the circumstances, the parties, as aforementioned, fervently pray that the settlement composing their dispute, fully, fairly and finally, may kindly be accepted and an award in respect of the said dispute may kindly be passed by the Hon'ble Tribunal in terms of the compromise and their names may be expunged from the continuance of this case and/or such other or further orders as may be considered fit and proper by the Hon'ble Tribunal may kindly be passed.

By the First Party

through
authorised representative

Sd. (Illegible)

Dated 20-5-92

Bhubaneswar

By the Second Party

- (1) Arjun Ch. Barik
- (2) Dayanidhi Barik
- (3) Ram Ch. Mohakud
- (4) Muralidhar Barik
- (5) Jugal Mohakud
- (6) Padmalabh Barik
- (7) Kurti Barik
- (8) Jugamani Barik
- (9) Dhaneswar Majhi

THE TATA IRON & STEEL CO. LTD.
GEOLOGICAL SERVICES : JAMSHEDPUR

Ref. No.

Dear Sir /Madam.

Dated :

Pursuant to the joint compromise petition dated 20-5-92 filed before the Industrial Tribunal Orissa, Bhubaneswar hereby appointed as Mazdoor in the grade of Rs. 1350-20-1630/- per month on the following terms and conditions :—

1. Your appointment shall be subject to your being found medically fit, for the post, by the Company's authorised Medical Officer(s).
2. Before your appointment you shall have to produce all certificates testimonials etc, if any, in original in support of your age, academic and other qualifications experience etc.
3. On appointment you will be paid a basic salary of Rs. 1350/- per month in the above grade along with other admissible allowance.
4. You will be eligible for the admissible perquisites and amenities provided by the Steel Company.
5. You will be on probation for a period of 6(six) months, should your aptitude for work, performance on the job and conduct be found unsatisfactory, during the above period or extended period of probation your services may be terminated without giving any notice or pay in lieu of notice.
6. You will be governed by the Company's Certified Standing Orders, provisions of other statutes and Company's Rules and Regulations as are applicable.
7. Your services are transferable and you shall be liable to be transferred to any existing department/establishment of the Company and/or any department/establishment that may be taken over by the Company in future.
8. As long as you will be in the service of the Steel Company you shall not engage yourself in any trade or business or profession without the express permission of the Company.
9. You shall be required to submit a no objection certificate, before employment, from your present employer, if you are in service.
10. For the purpose of free medical treatment, family would mean yourself, spouse, un-married daughters, sons below 21 years of age, father and mother if dependent on you.
11. Before employment you shall have to vacate the Company's quarters which may be under possession of your father/mother/husband/brother.
12. The Steel Company shall not take any responsibility or bear any expenses whatsoever towards your joining duty.

If the above terms and conditions are agreeable to you, you may sign the enclosed copy of this letter in token of your acceptance of the above mentioned clauses of your employment and submit the same to Sr. Geologist (Exploration), TISCO Ltd., Joda and report to him by.....

Yours faithfully,
Sd/- (Illegible)

f : THE TATA IRON & STEEL COMPANY LTD.
CHIEF OF GEOLOGICAL SERVICES
JAMSHEDPUR

- (1) Arjun Ch. Barik
- (2) Dayanidhi Barik
- (3) Ram Ch. Mohakud
- (4) Muralidhar Barik
- (5) Jugal Mohakud
- (6) Padmalabh Barik
- (7) Kurti Barik
- (8) Jugarnani Barik
- (9) Dhareswar Majhi

नई दिल्ली, 17 अगस्त, 92

का०आ० 2374:—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, भारत गोल्ड माइन्ज लिमिटेड ऊरगढ़, पी०ओ०

के०जी०एफ०-563120 के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, बंगलोर के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-8-92 को प्राप्त हुआ था।

[संख्या एल-43011/4/88-डी III (बी)]

के०वी०बी० उन्नी. डैस्क अधिकारी

New Delhi, the 17th August, 1992

S.O. 2374.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bharat Gold Mines Limited, Oorgaum P.O. K.G.F.-563120 and their workmen, which was received by the Central Government on 17-8-1992.

[No. L-43011/4/88-D.III (B)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated this 10th day of August, 1992

PRESENT :

Shri M. B. Vishwanath, B.Sc., B.I., Presiding Officer.
Central Reference No. 2/89

I PARTY :

S/Shri Paneerselvam and Mani, C/o The Sr. Joint Secretary, B.G.M. Labour Association, Oorgaum, K.G.F.-563120.

V/s.

II PARTY :

The Managing Director, Bharat Gold Mines Ltd. Survarnabhavan, Oorgaum P.O. K.G.F.-563120.

AWARD

In this reference made by the Hon'ble Central Government by its Order No. L-43011/4/88-D.III (B) dated 23-12-88 under Section 10(1)(d) of I. D. Act, the point for adjudication as per schedule to reference is :

"Whether the action taken by the management of Bharat Gold Mines Ltd., K.G.F. in dismissing S/Shri Mani, Drilling-cum-blaster Assistant and Paneerselvam, General Labour from service w.e.f. 17-6-1987 is justified. If not, to what relief they are entitled?"

2. Ex. M-2 is the charge sheet (First show cause notice) issued to the workman Mani and Ex. M-3 is the charge sheet (first show cause notice) issued to the other workman Paneerselvam. The charge against both the workmen was that they being employees of the II party involved in theft/abettment of theft on 7-2-87 at 700th level in No. 1 shaft at 1-00 a.m. Both the workmen were found engaged in drilling. They were connived with another employee Rajendran, Rock Drill Operator-cum-blaster who was selecting, picking, breaking and collecting the visible GBQ pieces in a piece of cloth with the intention of stealing them. On noticing the presence of the detectives said Rajendran hid the bundle containing the visible GBQ pieces in between the wall and the pole near the workspot and left the place. The present two workmen also left the workspot and when they came to 700th level and when asked by the detectives, they failed to give satisfactory reply.

3. There was a departmental enquiry against both the present workmen and Rajendran. Enquiry Officer submitted his report of the findings as per Ex. M-11, holding the present two workmen and Rajendran guilty. The Disciplinary Authority passed the order of dismissal as per Exs. M-17 and 18 after issuing show cause notice as per Exs. M-12 and 13. From the material on record, it is clear, Rajendran has not approached the Labour Commissioner. The present reference relates only to Mani and Paneerselvam.

4. In the claim statement both the workmen Mani and Paneerselvam have questioned the validity of the D.E. They have denied the incident alleged by the II party against them.

5. In the counter statement the II party has stated that the D.E. is proper and valid. The II party has asserted that the incident alleged against the two workmen is true.

6. My Learned Predecessor by his considered order dated 14-8-89 has held that the D.E. against the two workmen was in accordance with law. On departmental enquiry the Enquiry Officer MW-1 Das has been examined on behalf of the II party. On behalf of the I party workmen they have got themselves examined.

7. Since the D.E. has been held to be in accordance with law, now the point for consideration is "whether there was victimisation, whether the findings given by the E.O. as per Ex. M-11 are perverse and whether the punishment of dismissal is adequate".

8. Arguments were addressed on the above points by the Learned counsel for the II party. Though a number of opportunities were given to the Learned counsel for the I party he has not addressed his arguments. The two workmen were also not present on 4-8-92. Hence the case was posted for award.

9. At the outset it should be stated that there is absolutely no evidence regarding victimisation.

10. The enquiry report Ex. M-11 submitted by the E.O. MW-1 runs to 18 pages. The E.O. has examined 10 witnesses on behalf of the II party management. He has in great detail referred to the evidence of the witnesses. He has referred to the fact that the bundle containing GBQ pieces was hidden by Rajendran. He has referred to the evidence that the present two workmen involved in theft/abettment of theft in 700th level in No. 1 shaft at 1-00 a.m. they were engaged in drilling. He has come to the conclusion that Rajendran was doing the act of picking the GBQ pieces in connivance with the present two workmen. He has discussed the statements of all the witnesses thoroughly, and has reached the conclusion that the two workmen alongwith Rajendran were guilty. At page 5 of his report, on the basis of the witnesses examined by him, the E.O. has shown how the incident was proved. He has also discussed in detail the part played by the present two workmen and how they connived with Rajendran. After going through the report Ex. M-11, I do not find anything to hold that it is perverse.

11. The workman WW-1 Mani has stated in his evidence that E.O. told him about the charges. He has further stated in his evidence that the E.O. gave him opportunity to cross-examine the management witnesses. These answers, though given at the time of evidence on D.E., reflect in the circumstances of the case on the validity of findings given by MW-1. WW-2 Paneerselvam has not stated anything in evidence attacking the D.E. This also suggests in the peculiar circumstances of the case that the findings given by the E.O. as per Ex. M-11 are valid.

12. Now I come to adequacy of punishment. The two workmen have abetted the Commission of offence of theft by another employee Rajendran. If they were honest they could have themselves caught hold Rajendran and intimated the concerned authorities. Both the workmen stand in the position of accomplices. I am of opinion that the punishment imposed is proper.

13. For the aforesaid reasons I pass the following :

ORDER

The reference is rejected.
Award passed rejecting the reference.
Submit to Government.

(Dictated to Stenographer, taken down by him, transcribed by him, corrected and signed by me)

M. B. VISHWANATH, Presiding Officer
CGIT-LC, Bangalore

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated this 10th day of August, 1992

PRESENT :

Shri M. B. Vishwanath, B.Sc., B.L., Presiding Officer.
Central Reference No. 2/89

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S/Shri Paneerselvam and Mani, C/o The Sr. Joint Secretary, B.G.M. Labour Association, Oorgaum, K.G.F.-563120.

V/s.

II PARTY :

The Managing Director, Bharat Gold Mines, Ltd., Survarnabhavan, Oorgaum P.O. K.G.F.-563120.

AWARD

In this reference made by the Hon'ble Central Government by its Order No. L-43011/4/88-D.III (B) dated 23-12-88 under Section 10(1)(d) of I. D. Act, the point for adjudication as per schedule to reference is :

"Whether the action taken by the management of Bharat Gold Mines Ltd., K.G.F. in dismissing S/Shri Mani, Drilling-cum-blaster Assistant and Paneerselvam, General Labour from service w.e.f. 17-6-1987 is justified. If not, to what relief they are entitled ?"

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ORDER

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Submit to Government.

(Dictated to Stenographer, taken down by him, transcribed by him, corrected and signed by me).

M. B. VISHWANATH, Presiding Officer

नई विल्ली, अगस्त, 1992

कांग्रा० 2375 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 ने अनुबंध में रेंट्रीय सरकार टाटा आयरण एंड स्टील कं. लिमिटेड, जोड़ा

जिला किओन्जर के प्रबन्धतान्त्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निविट औद्योगिक विवाद में औद्योगिक अधिकरण ऑडिसा (भुवनेश्वर) के पंचपट को प्रकाशित करती है, जो रेंट्रीय सरकार को 13-8-92 को प्राप्त हुआ था।

[मंख्या एन-26011/4/91-आई आर(विविध)]

पै०वी०बी० उन्नी, इस्क अधिकारी

New Delhi, the 17th August, 1992

S.O. 2375.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Orissa (Bhubaneswar) as shown in the Annexure in the industrial dispute between the employers in relation to the management of Tata Iron and Steel Company Limited, Joda and their workmen, which was received by the Central Government on 13-8-1992.

[No. L-26011/4/91-IR (Misc.)]

K. V. B. UNNY, Desk Officer

ANNEUXRE

INDUSTRIAL TRIBUNAL ORISSA, BHUBANESWAR
PRESENT :

Sri R. K. Dosh, LL. B., Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar.

Industrial Dispute Case No. 19 of 1991 (Central)
Bhubaneswar, the 4th August, 1992

BETWEEN

The management of Prospecting Division, Tata Iron and Steel Company Limited At/P.O. Joda, Dist. Keonjhar
First Party-management

AND

Their workmen, namely,

- (1) S/Shri Bipin Naik S/o Natoram Naik,
- (2) S/Shri Arjun Charan Barik S/o Narottam Barik,
- (3) S/Shri Dayanidhi Barik, S/o Dhania Barik,
- (4) S/Shri Raghunath Khandayat, S/o Satuni Khandayat,
- (5) S/Shri Ram Chandra Mohakud, S/o Gobardhan Mahakud,
- (6) S/Shri Murlidhar Barik, S/o Saktu Barik,
- (7) S/Shri Jugal Mahakud, S/o Bhagirathi Mahakud,
- (8) S/Shri Mohura Pury, S/o Saluka Pury,
- (9) S/Shri Nakru Bagth, S/o Rabi Bagth,
- (10) S/Shri Kumar Majhi, S/o Gandhari Majhi,
- (11) S/Shri Rabindra Munda, S/o Bir Singh Munda,
- (12) S/Shri Dabra Mambram, S/o Manji Marbram,
- (13) S/Shri Pandmalav Barik, S/o Nihi Barik,
- (14) S/Shri Guru Karua, S/o Basdhani Karua
- (15) S/Shri Bikram Munda, S/o Sunaram Munda,
- (16) S/Shri Kunti Barik, S/o Dunradhar Barik,
- (17) S/Shri Jagatmani Barik, S/o Ragnunath Barik,
- (18) S/Shri Damudhar Barik, S/o Dhukta Barik,
- (19) S/Shri Dhaneswar Majhi,
- (20) Shri Kuna Munda.

APPEARANCES :

Sri S. N. Acharya—for the First Party-management.
Dy. Chief Personnel Manager (Mines)—for the second party—The workmen themselves.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred upon them by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial disputes Act, 1947 have referred the following dispute for adjudication by this Tribunal :—

"Whether the demand of the North Orissa Workers

Union, Rourkela-12, Dist. Sundergarh for regularisation in employment of Shri Bipin Naik and 19 others by the management of Sr. Geologist (E), Joda Prospecting Division, Tata Iron and Steel Company Limited, Joda, Dist. Keonjhar as against the illegal termination of services of such workmen w.e.f. 10th August, 1990 and thereafter during the pendency of the conciliation proceeding giving employment to these workmen from 3-11-90 for a specific period is lawful ? If so, to what relief the workmen are entitled ?"

2. Parties have filed memorandum of settlements on different dates and prayed to pass an award in terms of such settlements arrived at between them. All the workmen appeared personally and submitted that they have settled the dispute out of court in the interest of industrial peace and harmony. The terms or settlements were readover and explained to the parties to which they admitted to be true and correct. The settlement being fair is recorded. Accordingly, an award is passed in terms of the settlement. The memorandum of settlements filed on 27-12-91, 23-1-92 and 20-5-92 do form part of the Award.

Dictated and corrected by me.

R. K. DASH, Presiding Officer

FORM H

(Under Rule 58 of the Industrial Disputes (Central) Rule, 1957)

MEMORANDUM OF SETTLEMENT Dated 25-9-1991
BETWEEN

Representing Employers .

1. Sri A. W. Pradhan,
Chief of Geological Services,
Tisco Limited, Jamshedpur.
2. Sri A. K. Mukhopadhyaya,
Sr. Geologist, Tisco Limited,
Joda.

Representing Workmen :

1. Sri G. S. P. Sinha,
Vice President,
Tata Workers' Union,
Jamshedpur.
1. Sri S. P. Bose,
Union representative,
Tata Workers' Union,
Outdoor Geological.

SHORT RECITAL OF THE CASE

The Geological Services Department of TISCO, Jamshedpur had taken up prospecting projects jobs at Bamebari and Joribar in the district of Keonjhar, Orissa.

In the said prospecting operation, number of workmen had been engaged on purely temporary basis for different and specific spells of contractual engagements depending upon the work requirement of the said projects. On conclusion of the said project works, the establishment of prospecting projects were wound up and consequently, the contractual services of the workmen stood automatically terminated.

2185 GI/92-3

Forty two workmen, as per list appended here to as Enclosure I, raised industrial disputes through the North Orissa Workers' Union and the said disputes after unsuccessful conciliation have been referred to the Hon'ble Industrial Tribunal, Orissa, Bhubaneswar by Government of India, Ministry of Labour's Order No. L-26011/4/91-IR (M.Sc.) dated 25/3/4/91 and Order No. L-26011/5/91-IR (Misc.) of 24-4-91 wherein the schedule of the disputes referred for adjudication are respectively in the following terms :

"Whether the demand of the North Orissa Workers' Union, Rourkela, 12, Dist. Sundergarh for regularisation in employment of Shri Mira Barik and 21 others (list enclosed) by the management of Superintendent, Geological Department (Mines Division), Tata Iron and Steel Company Limited, Jamshedpur at Bamebari area, Joda in the district Keonjhar (Orissa) is lawful and justified ? If so, to what relief of the workmen are entitled to ?"

"Whether the demand of the North Orissa Workers' Union, Rourkela-12, District Sundergarh for regularisation in employment of Shri Bipin Naik and 19 others (list enclosed) by the management of Sr. Geologist (E), Joda, Prospecting Division, Tata Iron and Steel Company Limited, Joda, District Keonjhar as against the illegal termination of service of such workmen w.e.f. 10th August, 1990 and thereafter during the pendency of the conciliation proceedings giving employment to those workmen from 3-11-90 for a specific period is lawful ? If so, to what relief the workmen are entitled to ?"

The first order of reference has been registered as I. D. Case No. 17/91 (C) while the second order of reference has been registered as I. D. Case No. 19/91 (C) in the file of the Industrial Tribunal, Orissa, Bhubaneswar.

During the pendency of the above two cases before the Industrial Tribunal, some of the workmen in both the disputes totalling to 12 in number took support from Tata Workers' Union, Registered No. INTUC-55 which is the recognised Union in the Industry, for an early amicable, fair and all round settlement of their disputes and to avoid protracted litigation in the Tribunal and in higher Courts. The Tata Workers' Union espoused the cause of the said workmen before the Management and after prolonged discussions with an attitude of give and take and with an earnestness of resolving the disputes fully and finally, including on all matters incidental to and connected with the said disputes, the parties having succeeded in arriving at an all-out composition of the disputes and differences, the terms of such composition are as set out hereunder.

TERMS OF SETTLEMENT

(I) In consideration of the fact that these 17 workmen had worked intermittent spells, the management agrees to offer regular employment to them on terms and conditions as set out in the specimen copy of appointment offer contained in Enclosure-II to this settlement. The workmen shall be taken into employment on signing the said offer of employment which they agree to do within a period of seven days of receipt of such offer and shall be posted at such place or places as per the work requirement of the department. Their employment under the Company in the Geological Services Department will commence from the date of their reporting to duty.

(II) It is agreed that in view of the said offer of regular employment to these workmen, their disputes as pending in the Hon'ble Industrial Tribunal in I. D. Case No. 17 of 1991 (C) and I. D. Case No. 19/91 (C) shall be deemed to have been fully and finally settled and that there shall be no claim, other or further claim or dispute existing or any time apprehended in the matter of the said disputes or on any matter connected therewith or incidental thereto. It is also made clear that there shall be no claim of any sort in respect of their employment, non-employment or conditions of service in respect of their past temporary/casual employment with the Company.

(III) It is agreed that the disputes pending adjudication in the aforesaid I. D. Cases having been amicably and fully settled, the parties to the settlement shall jointly and/or severally file appropriate petition before the Hon'ble Tribunal for kindly taking note of the compromise of the dispute as per the terms of the settlement and to pass an award in terms of the said settlement.

(IV) The parties understand and accept this compromise as fair and amicable and in their best mutual interest.

SIGNATURE OF THE PARTIES

For the employer :

1. A. W. Pradhan,
Chief of Geological Services
Tisco Limited, Jamshedpur.
2. A. K. Mukhopadhyay,
Sr Geologist (E)
Tisco Limited, Joda.

For the Workmen :

1. G. S. P. Sinha,
Vice President,
Tata Workers' Union, Jamshedpur.
2. S. P. Bose,
Union representative,
Tata Workers' Union,
Outdoor Geological.

Witness with addresses :

- 1.
- 2.

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

I. D. Case No. 19/91 (C)

BETWEEN

Senior Geologist (E)

Tata Iron and Steel Co. Ltd.,
At/P.O. Joda, Dist. Keonjhar,
Orissa

... 1st Party

AND

Their workmen

(Bipin Naik and 19 others)

... 2nd Party

In the matter of :

A petition for Compromise/Composition of the dispute in respect of S/Sri

Raghunath Khandayat
Nehru Purty
Rabindra Munda
Bikram Munda
Kuna Munda
Bandudhar Barik

The humble joint petition of compromise by and between the parties most respectfully sheweth :

1. That the Industrial Dispute for adjudication in the present case is as follows :

"Whether the demand of the North Orissa Workers' Union Rourkela-12, Dist. Sundergarh for regularisation in employment of Bipin Naik and 19 others (list enclosed) by the Management of Sr. Geologist (E), Joda Prospecting Division, TISCO Limited, Joda, Dist. Keonjhar as against the illegal termination of service with effect from 10-8-1990 and thereafter during the pendency of the conciliation proceedings giving employment to those workmen from 3-11-1990 for specific period is lawful ? If so, to what relief the workmen are entitled to ?"

2. That in the meantime the 2nd party, workmen and the 1st party, management has an amicable, fair and all-round composition of disputes mentioned above. The matter was discussed and deliberated by and between the parties for quite sometime and finally it has been unanimously agreed by and between the parties to the disputes that the disputes in respect of the following workmen would be composed fairly and fully.

- (1) Sri Raghunath Khandayat
- (2) Sri Nehru Purty
- (3) Sri Rabindra Munda
- (4) Sri Bikram Munda
- (5) Sri Kuna Munda
- (6) Sri Benudhar Barik

Terms of Compromise

1. In consideration of the fact that these workmen had worked intermittent spells, the management agrees to offer regular employment to them on the terms and conditions as set out in the specimen copy of appointment offer contained in enclosure-1 to this settlement. The workmen shall be taken into employment on signing on the offer of employment within a period of 7 days of receipt of such offer shall be posted at such place or places as per the work requirement of the department. Their employment in the Company under Geological Services Department will commence from the date of their reporting for duty.

2. It is agreed that in view of the said offer of employment to these workmen their disputes as pending in the Hon'ble Industrial Tribunal in I. D. Case No. 19 of 1991 (C) shall be deemed to have been fully and finally settled and that there shall be no claim other or further claim or dispute existing or at any time apprehended in the matter of said dispute or in any matter connected herewith or incidental thereto. It is also made clear that there shall be no claim of any sort in respect of their employment, non-employment or conditions of service in respect of their past temporary/casual employment with the Company.

- (1) Sri Raghunath Khandayat
- (2) Sri Nehru Purty
- (3) Sri Rabindra Munda
- (4) Sri Bikram Munda
- (5) Sri Kuna Munda
- (6) Sri Benudhar Barik

3. It is agreed that the disputes pending adjudication is the aforesaid industrial dispute case having been amicably and fully settled, the parties to the settlement file this petition before the Hon'ble Tribunal for kindly taking note of the compromise of the dispute as per the terms of compromise and to pass an award in terms of the same.

PRAYER

In the circumstances, the parties, as aforementioned, fervently pray that the settlement composing their dispute, fully, fairly and finally, may kindly be accepted and an award in respect of the said dispute may kindly be passed by the Hon'ble Tribunal in terms of the compromise and their names may be expunged from the continuance of this case and/or such other or further orders as may be considered fit and proper by the Hon'ble Tribunal may kindly be passed.
By the First Party

through
authorised representative
Sd/-

Deputy Chief Personnel Manager
Tata Iron and Steel Co. Ltd.
By the Second Party

- (1) Sri Raghunath Khandayat
- (2) Sri Nehru Purty
- (3) Sri Rabindra Munda

(4) Sri Bikram Munda
 (5) Sri Kuna Munda
 (6) Sri Benudhar Barik

THE TATA IRON AND STEEL CO. LTD. GEOLOGICAL SERVICES JAMSHEDPUR

Re. No.

Dated : _____

Dear Sir/Madam.

Pursuant to the joint compromise petition dated 20-1-92 filed before the Industrial Tribunal Orissa, Bhubaneswar hereby appointed as Mazdoor in the grade of Rs. 1350-20-1630 per month on the following terms and conditions :—

1. Your appointment shall be subject to your being found medically fit, for the post, by the Company's authorised Medical Officer(s).
2. Before your appointment you shall have to produce all certificates testimonials etc. if any, in original in support of your age, academic and other qualifications experience etc.
3. On appointment you will be paid a basic salary of Rs. 1350 per month in the above grade along with other admissible allowance.
4. You will be eligible for the admissible perquisites and amenities provided by the Steel Company.
5. You will be on probation for a period of 6 (six) months, should your aptitude for work, performance on the job and conduct be found unsatisfactory, during the above period or extended period of probation your services may be terminated without giving any notice or pay in lieu of notice.
6. You will be governed by the Company's Certified Standing Orders, provisions of other statutes and Company's Rules and Regulations as are applicable.
7. Your services are transferable and you shall be liable to be transferred to any existing department/establishment of the Company and/or any department/establishment that may be taken over by the Company in future.
8. As long as you will be in the service of the Steel Company you shall not engage yourself in any trade or business or profession without the express permission of the Company.
9. You shall be required to submit a no objection certificate, before employment, from your present employer, if you are in service.
10. For the purpose of free medical treatment, family would mean yourself, spouse, un-married daughters, sons below 21 years of age, further mother if dependent on you.
11. Before employment you shall have to vacate the Company's quarters which may be under possession of your father/mother/husband/brother.
12. The Steel Company shall not take any responsibility or bear any expenses whatsoever towards your joining duty.

If the above terms and conditions are agreeable to you, you may sign the enclosed copy of this letter in token of your acceptance of the above mentioned clauses of your employment and submit the same to Sr. Geologist (Exploration), TISCO Ltd., Joda and report to him by

(1) Sri Raghunath Khandayat
 (2) Sri Nehru Purtty
 (3) Sri Rabindra Munda
 (4) Sri Bikram Munda

(5) Sri Kuna Munda
 (6) Sri Benudhar Barik

The Tata Iron and Steel Company Ltd.
 Chief of Geological Services Jamshedpur
 Sd/-

Yours faithfully,

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

I. D. Case No. 19/91 (C)

BETWEEN

The Senior Geologist (E) TISCO Ltd. Joda ...1st Party
 AND

Their Workmen

(Bipin Naik and 19 others) ... 2nd Party

In the matter of

A petition for Compromise/Composition of the dispute in respect of :

(1) Shri Arjun Ch. Barik
 (2) Shri Dayanidhi Barik.
 (3) Shri Ram Ch. Mohakud,
 (4) Shri Muralidhar Barik,
 (5) Shri Jugal Mohakud
 (6) Shri Padmalabh Barik,
 (7) Shri Kurti Barik,
 (8) Shri Jugamani Barik
 (9) Shri Dhaneswar Majhi.

The humble petition of compromise by and between the parties most respectfully sheweth :

1. That the Industrial Dispute for adjudication in the present case is as follows :

"Whether the demand of the North Orissa Workers Union Rourkela-12, Dist. Sundergarh for regulation in employment of Bipin Naik and 19 others (list enclosed) by the management of Senior Geologist (E), Joda Prospective Division, TISCO Ltd, Joda, Dist. Keonjhar, as against the illegal termination of service with effect from 10-8-1990 and thereafter during the pendency of the conciliation proceeding giving employment to their workmen from 3-11-1990 for specific period is lawful ? If so to what relief the workmen are entitled to ?"

2. That in the meantime the 2nd party, workmen and the 1st party Management has an amicable, fair and all round composition of dispute mentioned above. The matter was discussed and deliberated by and between the parties for quite sometime and finally it has been unanimously agreed by and between the parties to the dispute that the disputes in respect of the following workmen would be composed fairly and fully.

(1) Shri Arjun Ch. Barik,
 (2) Shri Dayanidhi Barik,
 (3) Shri Ram Ch. Mohakud,
 (4) Shri Muralidhar Barik,
 (5) Shri Jugal Mohakud,
 (6) Shri Padmalabh Barik,
 (7) Shri Kurti Barik,
 (8) Shri Jugamani Barik,
 (9) Shri Dhaneswar Majhi.

TERMS OF COMPROMISE

1. In consideration of the fact that these workmen had worked intermittent spells, the management agrees to offer regular employment to them on the terms and conditions as set out in the specimen copy of the appointment order contained in enclosure-1 to this settlement. The workmen shall be taken into employment on signing on the offer of employment within a period of 7 days of receipt of such offer and shall be posted at such place or places as per the work requirement of the department. Their employment in the Company under Geological Services Department will commence from the date of their reporting for duty.

2. It is agreed that in view of the said offer of employment to these workmen their disputes as pending in the Hon'ble Industrial Tribunal in I.D. Case No. 19 of 1991 (C) shall be deemed to have been fully and finally settled and that there shall be no claim other or further claim or dispute existing or at any time apprehended in the matter of said dispute or in any matter connected therewith or incidental thereto. It is also made clear that there shall be no claim of any sort in respect of their employment, non-employment or conditions of service in respect of their past temporary/casual employment with the Company.

3. It is agreed that the disputes pending adjudication in the aforesaid industrial dispute case having been amicably and fully settled, the parties to the settlement file this petition before the Hon'ble Tribunal for kindly taking note of the compromise of the dispute as per the terms of compromise and to pass an award in terms of the same.

PRAYER

In the circumstances, the parties, as aforementioned, fervently pray that the settlement composing their dispute fully, fairly and finally may kindly be accepted and an award in respect of the said dispute may kindly be passed by the Hon'ble Tribunal in terms of the compromise and their names may be expunged from the continuance of this case and/or such other or further orders as may be considered fit and proper by the Hon'ble Tribunal may kindly be passed.

By the First Party
through
authorised representative
Sd/-

By the Second Party

Arjan Ch. Barik
Dayanidhi Barik
Ram Ch. Mohakud
Muralidhar Barik
Padmalab Barik
Jugal Mohakud
Kurti Barik
Jugamani Barik
Dhaneswar Majhi

Bhubaneswar,
Dated : 20-5-1992.

THE TATA IRON AND STEEL CO. LTD.
GEOLOGICAL SERVICES, JAMSHEDPUR

Ref. No. Dated :
Dear Sir/Madam.

Pursuant to the joint compromise petition dated 20-5-92 filed before the Industrial Tribunal Orissa, Bhubaneswar hereby appointed as Mazdoor in the grade of Rs. 1350-20-1630 per month on the following terms and conditions :—

- Your appointment shall be subject to your being found medically fit, for the post, by the Company's authorised Medical Officer(s).
- Before your appointment you shall have to produce all certificates testimonials etc. if any, in original in support of your age, academic and other qualifications experience etc.
- On appointment you will be paid a basic salary of Rs 1350 per month in the above grade along with other admissible allowance.
- You will be eligible for the admissible perquisites and amenities prov'ded by the Steel Company.
- You will be on probation for a period of 6 (six) months, should your attitude for work, performance on the job and conduct be found un-satisfactory, during the above period or extended period of probation your services may be terminated without giving any notice or pay in lieu of notice.

- You will be governed by the Company's Certified Standing Orders, provisions of other statutes and Company's Rules and Regulations as are applicable.
- Your services are transferable and you shall be liable to be transferred to any existing department/establishment of the Company and/or any department/establishment that may be taken over by the Company in future.
- As long as you will be in the service of the Steel Company you shall not engage yourself in any trade or business or profession without the express permission of the Company.
- You shall be required to submit a no objection certificate, before employment, from your present employer, if you are in service.
- For the purpose of free medical treatment, family would mean yourself, spouse, un-married daughters, sons below 21 years of age father and mother if dependant on you.
- Before employment you shall have to vacate the Company's quarters which may be under possession of your father/mother/husband/brother.
- The Steel Company shall not take any responsibility or bear any expenses whatsoever towards your joining duty.

If the above terms and conditions are agreeable to you, you may sign the enclosed copy of this letter in token of your acceptance of the above mentioned clauses of your employment and submit the same to Sr. Geologist (Exploration), TISCO, Ltd., Joda and report to him by

Yours faithfully,

for THE TATA IRON AND STEEL COMPANY LTD.
Chief of Geological Services

Jamshedpur.

Arjan Ch. Barik

Dayanidhi Barik

Ram Ch. Mohakud

Muralidhar Barik

Padmalab Barik

Jugal Mohakud

Kurti Barik

Jugamani Barik

Dhaneswar Majhi

नई दिल्ली, 18 अगस्त, 1992

का०आ० 2376:—औद्योगिक विवाद भवित्वनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैं जॉ.एम० बखशी एड क० डाकखाना पाराम्बाप, जिला कटक के प्रबन्धसंतंत्र में संवद नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में आरबीट्रिटर श्री जी०आर० माझ, सी०एल०सी० (सी) के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-8-92 को प्राप्त हुआ था।

[संच्या एल-38013/1/91-आई आर (फिलिप)
नॉवी०बी० उन्नी, डैस्क अधिकारी

New Delhi, the 18th August, 1992

S.O. 2376.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Arbitrator Shri G. R. Majhee, Dy. CLC (C) as shown in the Annexure in the industrial dispute between the employers in relation to the management of M/s. J. M. Baxi and Co. At/P.O. Paradip, Distt. Cuttack and their workmen, which was received by the Central Government on 14-8-1992.

[No. L-38013/1/91-IR (Misc.)]
K. V. B. UNNY, Desk Officer

ANNEXURE
BEFORE THE ARBITRATOR SHRI G. R. MAJHEE, DY.
CLC (C) NEW DELHI IN THE MATTER OF REFERENCE UNDER SECTION 10-A OF THE INDUSTRIAL
DISPUTES ACT, 1947

Reference No. S.O. 3193 dated 18-11-91

PARTIES :

EMPLOYER :

In relation to the management of M/s. J. M. Baxi and Co. At and P.O. Paradip Port Distt. Cuttack Pin-754142

2. M/s. T. P. Roy Choudhury at and P.O. Paradip Port Trust Distt. Cuttack.
3. M/s. O. S. C. Ltd. at and P.O. Paradip Port Trust Distt. Cuttack.
4. M/s. Mahimanand Mines Co., at and P.O. Paradip Port Trust Distt. Cuttack.
5. M/s. Orissa Stevedores Pvt. Ltd. at and P.O. Paradip Port Trust Distt. Cuttack.
7. M/s. Roy and Choudhury and Co. at and P.O. Paradip Port Trust Distt. Cuttack.
8. M/s. E. C. Bose and Co., Paradip Port at and P.O. Port Trust Distt. Cuttack.
9. M/s. Satish Chandra Das and Co. at and P.O. Paradip Port Trust Distt. Cuttack.

VERSUS

Workmen represented by the Paradip Workers Union
G. R. Majhee Dy. Chief Labour Commissioner (C)

Arbitrator

Appearance for the employer :

Shri Vidyadhar Mishra, Advocate.

Shri Manoranjan Patnaik, Advocate.

For the workmen :

Shri Panchanan Keneonge

Shri B. K. Bhattacharji

Shri S. P. Routroy

Shri Ananto Kumar Das

F. No. 1/38/89-Cen. I

Dated 14-8-1992

AWARD

By Order No. L-38013/1/91-IR (Misc.) dated 18th May, 1991

The Central Government in the Ministry of Labour has in exercise of the power conferred under Section 3 of Section 10-A of I. D. Act, 1947 published the arbitration agreement as under :

What should be the basis and modality of payment of (a) House Rent Allowance (b) Attendance Allowance (c) Incentive and from what date.

Paradip Port Workers' Union, submitted their written claim of statement and argued as follows :

1. Paradip Port Workers Union is a registered trade union which represents overwhelming majority of Paradip Port Employees registered and listed dock workers including clearing forwarding workers of C.F. the 800 pool administrator by Stevedores Association, Paradip. This Union was affiliated to All India Port and Dock Workers Federation. The Union represents all other categories of dock workers in private firm workers engaged for handling of cargo inside the port premises who are covered by the wage settlement held between the Government of India, Ministry of Surface Transport and Labour Federations of Port and Dock Workers in course of time. The Union further mentioned that the present reference is confined to 600 employees of clearing forwarding and handling workers pool administered by Stevedores Association/clearing forwarding agents of Paradip, all others categories of C&F workers who are defined as dock workers under the Dock Labour Employment Act, 1948 are concerned with the dispute. The Paradip clearing forwarding workers pool came into existence w.e.f. 12th March, 1984 as per bilateral agreement between different unions and stevedores, C&F agents/contractors operating at Paradip Port in order to regulate the employment of workers engaged by the concerned employees for better service conditions/security and labour welfare. This pool was registered under the Society Act, 1892 which is a statutory organisation vide registered No. 2990—633 due to severe law and order problem arised at Paradip Port on 19th March, 1984 this pool could not function and the clearing and forwarding work remained standstill upto 23rd March 1984. However from 23rd April, 1984 partially the pool was started functioning and port entry premises were

issued on 21st April, 1984 to section of workers. On the intervention of Port Trust Authority for fulfilled operation of C&F agents/other unions, an agreement was signed on 5th May, 1984 to run the pool styled as Paradip clearing forwarding and handling workers pool. Therefore a joint meeting was held by the stevedores and all unions having representation within C&F workers and which is unanimously resolved to change the name of the registered pool as Paradip clearing forwarding and handling workers pool. The pool in question have in their employment daily rated workers of 1479 categories including a few ministerial staff to maintain day to day affairs as booking of labourers, payment of wages, collection of levy etc. These 1479 workers are mainly constituted in 5 categories such as :

| | |
|---|------|
| (a) Steel Cargo handling workers numbering | —63 |
| (b) Bale and Bag handling workers numbering | —545 |
| (c) Coal handling workers numbering | —816 |
| (d) Iron Ore handling workers numbering | — 33 |
| (e) Chrome Ore handling workers numbering | — 32 |

| | |
|-------|------|
| Total | 1479 |
|-------|------|

Each categories also contained Supervisors, Sardars and Mazdoors.

As the member in few categories are not adequate to meet the requirement in respective working zone to perform the work and in order to mitigate the hardship, inconvenience for smooth performance of clearing and forwarding work, according to the instruction/communication of the Paradip Port Trust workers have been divided into 2 main broad categories such as bag and bale handling workers to meet the excess recruitment of one working zone by drawing labourers of other working zone available. The two broad categories were defined as under :

| | |
|-----------------------------|--------|
| Bag and Bale handling group | 545 |
| | 63 608 |
| and | |
| Bulk handling categories | 816 |
| | 33 871 |
| | 22 |

| | |
|---------|------|
| Total : | 1479 |
|---------|------|

By this arrangement the excess requirement in the field of 63 groups will be fulfilled by drawing the labourers of 545 group if available visa versa similarly in bulk handling categories minority categories of 33 and 22 group is given priority in Iron Ore and Chrome Ore truck unloading only. In case of excess needed the workers of 816 groups are booked for each groups will get daily picking priority in their respective work fields.

1. Stevedores/C&F agents/contractors and members of the stevedores Association are submitting the requisition for labourers as per their requirement to pool office for their work and the booking clerks appointed by the pool are booking respective categories as per booking priorities in respect working zones.

2. The Union further mentioned that they had been demanding for payment of wages and other fringe benefits on the same terms and condition as prevalent to Port and Dock workers which are streamlined in various wage settlements. Prior to formation of these pool these workers were also getting wages in accordance with the wage settlement from their employers. After functioning of the present pool the port trust issued circular/instruction from time to time to pay their minimum wages as are fixed by the wage settlement dated 11th April, 1984. The tenure of the wage settlement dated 11th April, 1984 expired on 31st December,

1987 and the new wage settlement arrived at 12th June 1992 at between the Government of India and Labour Federation which is effective from 1st January, 1988. The conclusion arrived in the discussion dated 15th, 16th, 23rd May and 12th June, 1989 held with the Ministry of Surface Transport and Federation are also given benefit of the settlement to unlisted/unregistered cargo handling workers. The union quoted the clarification as under :

It was clarified that the Ministry will issue Instructions to the Chairman of All Port Trusts and Dock Labour Boards that they may use their good offices in securing for the dock workers who are not registered or listed with the Dock Labour Boards engaged in handling cargo within the Port premises get wages in accordance with the current settlement.

3. After implementation of settlement dated 12th June, 1989 for port workers with retrospective effect i.e. 1-1-88, the Union raised a dispute to pay wages and allowance in accordance with the new settlement. Elaborate discussions were held on various dates to implement the above new settlement and at last on 5th January, 1990 both the parties agreed and finalised the pool wages of the different categories of C&F workers except the issue relating the basis and modalities of payment of HRA, Attendance allowance and calculation of incentive both the parties agreed to refer the matter for arbitration under Sec. 10-A of the I. D. Act, 1947.

In pursuance of the above understanding, Undertaking between the Union and the Management, the Assistant Labour Commissioner, Bhubaneswar referred the matter for arbitration under Section 10-A of the I. D. Act, 1947. Thereafter the Ministry of Labour and the employment vide its order No. 3193 dated 18th November, 1991 and published the same in the Official Gazette of India on 28th December, 1991 for arbitration of Industrial Dispute on the matter i.e. what should be the basis and modalities of payment of (a) HRA (b) Attendance allowance (c) Incentive with effect from what date.

4. The Union i.e. Paradip Port Workers Union claims HRA on behalf of C&F workers on the following grounds :

That it is a well known fact that in accordance with principle enunciated by various wage determining authorities like Industrial Tribunal, Wage Board Revision Committee etc. element of HRA formation significant portion of the wage packet of the workers. Many industries particularly in the private sector for element of legitimate expenditure, the worker is required to meet from his earning, these workers on Paradip Port have not yet been provided an accommodation to take shelter and they have to meet such legitimate expenditure from their earnings and savings for bad days. It was further mentioned that these workers in dispute there is no guarantee of wages and also have no certainty for getting daily work, but have to stay at Paradip Port throughout the month and year to perform the work of the employer to get wages for their livelihood as and when required. For this they have to pay house rent to private house owner, a house is a basic shelter for a worker alongwith their family members. Therefore taking in view this consideration as a welfare measure in the civilised country like India, the element of HRA being introduced. In the wage settlement dated 11th April, 1984 para 12.6 of the above settlement such allowances are introduced and reflected as under :

"12 House Rent Allowance

12.1 An employee who is not allotted accommodation by the Port Trust or the Dock Labour Board will be paid house rent allowance with effect from 1-1-1984, as per following rates :—

| PORT | Percentage of basic pay in the revised pay scale including the fixed special allowance : | | | |
|---|--|--------|--------|--------|
| | 1984 | 1985 | 1986 | 1987 |
| Bombay | 15% | 16 | 18 | 30 |
| Calcutta/Madras | 14 | 14 | 16 | 25 |
| Visakhapatnam/Cochin | 12 1/2 | 12 1/2 | 12 1/2 | 17 1/2 |
| Kandla/New Mangalore/Mormugao/Tuticorin | 12 1/2 | 12 1/2 | 12 1/2 | 15 |
| Paradip/Haldia | 10 | 10 | 10 | 10 |

(Subject to a minimum of Rs. 50/-)

12.2 House rent allowance at the rates specified in para 12.1 of this settlement will be admissible on production of rent receipt/Municipal valuation certificate and the amount HRA admissible in each case will be worked out as per rules/orders on this subject.

12.3 HRA at the rates specified in para 12.1 of the settlement will also be admissible without production of rent receipt or municipal valuation certificate but the amount of HRA in these cases will be limited to a pay inclusive of fixed special allowance of Rs. 1050 only in the pre-revised scale (even employees in receipt of pay inclusive of fixed spl. allowance exceeding Rs. 1050 in pre-revised scale).

The above paragraphs 12 to 12.3 clearly speaks the modality and basis of payment of HRA. Main criteria is the pre-revised scale basic pay plus fixed spl. allowance's percentage. Subject to minimum of Rs. 50. The minimum basic pay of pre-revised scale was Rs. 325 and spl pay Rs. 83 which arrives at Rs. 408 and percentage of HRA for Paradip Port arrives at Rs. 40.80 according to the formula. But the signatories of the settlement dated 11-4-84 has not taken the numerical calculation and based to compensate the human needs in the terms of money as a Welfare measure and they made it compulsory to pay the HRA minimum of Rs. 50 without giving weightage in numerical factor, than the basic human needs that is the element of legitimate expenditure of the workers. The sole intention of minimum of Rs. 50 a sum to compensate the expenditure on humanitarian ground not as a arithmetical calculation.'

Further the captioned settlement dated 12-5-89 speaks as follows (as Annexure-XI.)

"12. House Rent Allowance :

12.1 An employee who is not allotted accommodation by the Port Trust or the Dock Labour Board will be paid HRA at the following rates :

| PORT | 1-1-1988 to 31-12-91 | | 1-1-92 to 31-12-92 | |
|---|--|--|--|--|
| | Percentage of basic pay in the 1984 settlement pay scale | Pay in the revised pay scale minus Rs. 100/- | Percentage of basic pay in the 1984 settlement pay scale | Pay in the revised pay scale minus Rs. 100/- |
| Bombay | 30 | 30 | 30 | 30 |
| Madras/Calcutta | 25 | 25 | 25 | 25 |
| Visakhapatnam/Cochin | 17½ | 17½ | 17½ | 17½ |
| Kandla/New Mangalore/Mormugao/Tuticorin | 15 | 15 | 15 | 15 |
| Paradip/Haldia | 10 | 10 | 10 | 10 |

[भाग 11-खण्ड 3(ii)]

12.2 HRA at the rates specified in para 12.1 of this settlement will be admissible on production of rent receipt/Municipal valuation certificate and the amount of House Rent Allowance admissible in each case will be worked out as per rules/orders on this subject.

12.3 HRA at the rates specified in para 12.1 of this settlement will also be admissible without production of rent receipt or municipal valuation certificate, but the amount of HRA. In these case will be subject to the following ceiling.

| | |
|--|----------------------|
| (1) Bombay/Calcutta/Madras Visakhapatnam/Cochin | Rs. 1000/- per month |
| (2) Karwar/Mermu gao/New Mangalore/Tuticorin | Rs. 500/- per month |
| (3) Paradip/Maldia | Rs. 300/- per month |

While implementing the term of settlement employees viewed to aid the percentage of basic pay and HRA along with daily wage rate of workers which the Union strongly protected. Union emphasised that there is no guarantee of wages and there is no certainty in the employment whether the worker would get their booking at any day. In other words there is no certainty of getting booking/work. The worker has to pay a substantial amount towards house rent to the house owner. The Union contended that the minimum of Rs. 50 as contemplated in the wage settlement dated 11th April, 1989 should be restored. If not, there would be no meaning of adding this amount with daily wages if a worker would not get booking of any day. It was also mentioned that each worker would be required to report and stay at the booking office for which he would be entitled to get attendance allowance. It was also stressed that every workmen whether there would be work or no work reports at the pool office everyday.

The Union submitted that to restore full relief to the worker in term of the demand they should get the benefit from retrospective effect i.e. from the effective date of settlement of 12th June, 1989 w.e.f. 1-1-1988.

The Union contended that attendance allowance in all major ports are paid to the dock workers under the various decasualisation scheme operating in respective ports for the days they are not provided with work. A clause to that effect has been included in the scheme, the Union further mentioned that prior to 1974 different practices were followed at different ports W.R. Committee vide para 8.24 has submitted their recommendation which is quoted as under :

"8.24 We have carefully considered the different view points and given serious thought to the problem. We recommend that attendance allowance be paid uniformly in all Major Ports to such workers as are entitled to this allowance at present at the rate of 1/60 of the monthly wage, comprising basic pay in our proposed scales and DA according to our formula. This would be consistent with the provisions of the I.D. Act, 1947, in regard to compensation for lay off. We further recommend that our formula should have effect from the date of the Government orders on our recommendations."

Referring above recommendation the Union mentioned that various unions operating at Paradip Port raised a demand for payment of attendance money to the dock worker's of Paradip. Taking the financial capacity and other aspects the Paradip Port Trust introduced to pay Rs. 7.50 per day to each worker excluding the days of booking/guaranteed days, days of rest, weekly off, paid holidays and days covered by sick leave with other conditions. That privilege and practice also implemented in case of C&F workers in different manner of computation. The attendance

money of Rs. 7.50 per day maximum 7 days per month with daily wages. The Union further contended that as there is no guarantee of the wages and no certainty of getting work/booking on the other hand the workers have to attend pool office thrice daily for a substantial amount being spent for training to and fro their journey and missing wages for elsewhere work then they do not get booking, the amount of attendance allowance should be computed along with wages and should be paid separately to meet the expenditure incurred by the poor workers to attend the pool daily as in the case of clerks of Paradip Port. It was also argued by the Union that meanwhile the Paradip Port Trust revised the rate of attendance money @1/60 of the monthly wages for the cargo handling workers. In view of the above the Union demanded and argued to restore payment of attendance allowance in the manner and procedure adopted by the Port Trust for their registered pool workers and given effect in the Award from 1-1-88.

6. The representations of the Union argued that incentive of piece rated scheme introduced to get the better output and the scheme to linked to productivity. The gang consist of 8 labour and one sardar and for each gang datum has been fixed for rate of courages for calculating the piece rate per ton rate of cargo wages of the total gang and have been taken and divided with the datum of respective cargoes which the employees are doing and arriving the per to rate in an erroneous manner causing a substantial amount less than actual dues. The Union submitted that the per ton rate calculation should be given effect from 1-1-83 and arrears arising out of it be disbursed to each worker. Further as per the scheme incentive upto 50 per cent of the datum be paid 5 per cent excess of per ton rate and per 50 per cent datum 10 per cent of the per ton rate in order to get better output. S/Shri Vidhyadhar Mishra, Advocate Manoranjan Patnaik, Advocate learned counsel in responded to claim statement and the arguments of the Union as mentioned above stated that contention of the union regarding Dock Workers Federation and their represent their registration of trade union, affiliation to all India Port and Dock Workers Federation and their representation about all other categories of dock workers, private firm etc. the irrelevant or untrue. It was also pointed out by learned advocates on behalf of the respondents that no part of present reference confines to any worker administered by stevedores association and it was mentioned that CHF workers are not defined as dock workers, under Dock labour Act, 1948. It was also submitted on behalf of the respondent that CHF workers did not come into existence on account of bilateral agreement as mentioned by the Union. On the other hand CHF pool came into existence on account of tripartite agreement between port authorities union leaders and individual traders on 5th May, 1984.

7. It was also contended that out of 1479 CHF workers Paradip Port Workers Union represents only a minor group out of the aforesaid strength. Regarding the claims for payment of wages and other fringe benefits on the same term and conditions as prevalent to the port and dock workers, this question has not been referred for determination under the present reference. Similarly another question has been raised under the same conditions whether after functioning of the present pool, port trust issue/circular instruction from time to time to pay wages as fixed by the wage agreement dated 11th April, 1984. The tenure of the wage settlement dated 11th April, 1984 expires on 31st December, 1987 and new wage settlement was arrived at on 12th June, 1989 which is effected from 1st January, 1988. Apart from pleading of the facts the claimant union further says that the conclusion arises in the discussion dated 15th, 16th and 23rd May and 12th June, 1989 was to give benefit of the settlement unlisted, unregistered CHF workers which is not correct. In response to the contention of the claimant union, the representatives of the CHF agents stated that these questions are beyond the scope of reference. The alternative contention is that settlements referred are not applicable to CHF workers nor the discussion held on 15th, 16th, 22nd May and 12th June was ever intended to be extended to the CHF workers. Therefore, these questions cannot be gone into at the present arbitra-

tion. It may be further stated that the Port Trust authorities have no manner of right to exercise control over the payment of CFH workers. Nor the Port Trust is a party to this arbitration. Therefore the circular issued by Port Trust authorities can be no assistant in this arbitration case. It was emphasised that the letters under reference are irrelevant in view of the fact mentioned above. It was stressed that these CFH workers are admittedly not dock workers.

8. The specific disputes under reference has enumerated and pleading relating to the union claim relating to the Paradip Port Trust letter addressed to M/s. J. M. Baxi and Co. and others about the wages of port and dock workers and minute of discussion dated 12th June, 1989 are not going to establish that CFH workers can be acquitted or treated as dock workers. Therefore, these facts as contend-ed of union are not relevant.

9. The learned advocates further emphasised that the present dispute is not as what should be the quantum of house rent. The dispute is what should be the basis and modality of payment of house rent. In this context the representative of the Management referred the settlement arrived at on 23rd July, 1986 where the term "wage" includes basic pay, DA, VDA, HDA, House rent allowance, off day wages, national and festival holidays wages, attendance allowance and computation of daily wages was made dividing the basic monthly pay by 26 days and other components by 30 days.

The above principle is universally accepted and applied for computation of individual workers regarding their total entitlement where appointment/engagement is not continuous, certain, regular and there is no fixity in employment and no certainty in traffic in-flow. All these above ingredients are conspicuously present in the present case. Therefore, the same modality should be applied for payment of HRA to CFH workers.

10. Lastly when the above agreement was worked out and above principles were accepted, most of the workers of Paradip Port Workers' Union were the members of the Paradip Port Workers Mazdoor Union. In order to riggle out of all the rigorous of the effect of settlement they have just crossed the floor and planted a different settlement under different leadership. Irrespective of such change the settlement dated 23rd July, 1986 fixing the basis and modality of HRA operations as a decree in ream and binds of individual workers who are presently members of Paradip Port Workers' Union. Therefore, the present union or its individual members are stopped from speaking anything contrary to the modality and basis of payment of HRA as fixed as agreed upon under the settlement dated 23rd July, 1986.

11. It was further submitted by the learned counsel of the management that the agreement contended in the minute of discussion with the union dated 5th January, 1990 wherein it was agreed upon to refer the question of determination of basic and modality of payment of HRA, and attendance allowance and to determine as to whether these two components should be included in daily wages was done in order give a further touch of the finality to the similar procedure adopted in the settlement dated 23-7-1986 under reference and it was not intended to extend or depart away from the procedure.

12. It was further stated by the learned counsel of the management that the above principle is based on a sound reasoning because where work is not continuous, inflow of traffic is not definite and regular, the engagement of CFH workers is also not regular and certain, under such circumstances, if the modality and basis of payment of HRA is not included in daily wages then it could be next to impossible on the part of the traders to make the payment. For illustration, if any departure is made from the procedure adopted in the settlement dated 23rd July, 1986 regarding the procedure and the modality adopted for payment of HRA i.e. the total monthly house rent payable is to be divided by 30 and the fraction is to be added while computation of daily wages should be on the basis and modality. If this procedure is not adopted then the traders will be pushed

to a anomalous situation where they have no work not any occasion of engaging CFH workers, till then they will be forced to pay HRA.

13. Regarding the claims of union relating to attendance allowance it was mentioned by the learned counsel that all attempt has been made to equate the dock workers with CFH workers which in reality is not true. The field of operation is completely defined and apart from each other in all major ports the dock workers are either covered under dock labour board or a similar scheme relating to cargo handling operations decided to be undertaken by port trust Act. This is a decision of a statutory body. Capacity and the competency is far more than CFH agents who are merely individual traders.

14. Regarding the question of payment of incentive is not dependent on the fixing of datum'. Only after datum is fixed to a particular manning scale any incentive scheme can at all be introduced. Since the question of fixation of datum is pending determination by HPC headed by Hon'ble justice H. R. Khanna. The question is to wait till a final decision is arrived at by High Power Committee, New Delhi.

15. So far the payment of HRA to CFH workers are concerned, the representatives of the Union relied upon the settlements dated 11-4-84 and 12-6-89 as mentioned above in para-4 and the communication of Paradip Port authority addressed to CFH agent by Paradip Port. The Union is of the view that the aforesaid settlement have taken care of the provision of HRA. In other words the representatives of the management of Port Trusts and Federations Union were very much concerned about the question of payment of HRA after prolonged discussion the matter has been resolved in an amicable settlement with a view to providing welfare amenities to the workers of dock labour board. Immediately after the settlement management of port communicated for its implementation and emphasised on behalf the CHF agent that the settlement referred by the Paradip Port worker's union is no way connected/related to this dispute under reference before the arbitrator. It was stressed that the settlement as referred by the Union would give benefit to the employees of the Port Trust working under different schemes. CFH workers are not at all the employees of Paradip Port. Moreover, the CHF agents are not associated in the settlement. Therefore the settlement as referred by the unions are not at all applicable to CFH workers under dispute and the communication of Port authorities to CFH agent on different dates as mentioned above are the matter of communication only.

16. The letter of Paradip Port Trust dated 4th June, 1984 No. AD/APM/CMS-22/84 addressed to M/s. J. M. Baxi and Co. and 5 others regarding payment of wages to dock worker engaged on handling of carges within the port premises roads as under :

"In accordance with para 22.1 of the settlement dated 4-1-1981 with the Federation of Port & Dock Workers, the Dock workers engaged on cargo handling work within the port premises are paid minimum wages according to the terms of this settlement. The wages of Port & Dock workers have been further revised with effect from 1-1-1984 as per the settlement of the Federation and the Govt. of India dt. 11-4-1984. You are advised to see that the workers engaged on handling the cargo within the Port premises are paid the minimum wages as are fixed as per the settlement dated 11-4-1984."

The above letter is concerned/related to the settlement arrived at between the Government of India the Ministry of Shipping and Transport and all India Port and Dock Workers Federation, Indian National Port and Dock Workers Federation, Port Dock and Waterfront Workers Federation of India on the issue of wage revision and liberalisation of the term and conditions of employment of port and dock workers at major ports. Under term of settlement as referred above it has been spelt out in a great detail about the house rent allowance and its date of effect etc.

17. There is another letter of Paradip Port Trust. The traffic department dated 17th October, 1989 which was addressed to M/s. Baxi & Co., Paradip Port and 8 others regarding payment of wages to dock workers engaged in handling of cargo within port premises, which reads as under :—

"With further reference to this office Circular No. ADM/CHS/22/84 dated 4-6-84, this is to advise that the wages of Port & Dock workers have been further revised w.e.f. 1-1-88 as per the settlement arrived at between the representatives of the Management of Port Trust and Dock Labour Boards and the representatives of Labour Federations at New Delhi on 12-6-89. You are advised to see that the workers engaged on handling of cargo within the port premises are paid the minimum wages as are fixed as per the settlement dated 12-6-89. A copy of the settlement is enclosed for your reference. The action taken in the matter may please be intimated to this office at your earliest convenience".

This letter is related to settlement arrived at between the representative of Management of port trusts and dock labour Board and representatives of all Federations on 12th June, 1989 at New Delhi on the issues of wage revision and liberalisation of term and condition of employment of port and dock workers of 10 major ports, trusts and 7 dock labour boards. In the settlement the representatives of the management and the federations are equally concerned about the house rent allowance which have been spelt out in clear term of settlement in clause 12 as mentioned earlier.

18. On a close look in both the letters as quoted above it is amply clear about their coverage and who are the parties of the settlement. On a simple reading one would come to the conclusion how far they have got binding effects upon the CFH agents of the port. The minute of discussion held between the management of all India ports and other federation dated 12th June, 1989 part of the above mentioned minute of discussion is very relevant in the instant case which is quoted at the end of para 2.

In view of the above settlement and the communication of the port trust authority I am inclined to conclude the HRA to CF Workers is an important factor which deserves all consideration. Without coming to a conclusion about the applicability or its binding effects of the settlement as mentioned above, it was felt and considered necessary by the port trust authority to communicate the decision of the Port Trust, management and other federations that this benefit may be extended to every worker engaged in the port premises.

19. It is pertinent to mention that these CFH Workers involved in the dispute are required to stay at the port or near to the port area in order to enable themselves to report for duty conveniently whether they are engaged/deployed or not by the CFH agents. These CFH workers have to stay in rented houses in view of the fact that they have not been provided house accommodation which is an admitted fact before us.

It is a common existing phenomena that in most of the industries including like Paradip Port it has not been possible to provide suitable accommodation to all the employees for which employee of the port become entitled for house rent allowance. In support of the claim, Paradip Port Workers Union relied upon to major wage settlement which may be termed as national wage agreement between the management of Port Trust and major federation as above and the learned counsel stressed on settlement of wages for pool workers covering 1749 workers of the pool on 23-7-86. Under this settlement, it is understood and agreed by and between the parties that the term "Wages" In that context of that settlement should include basic pay D.A., VDA, HRA off day wages, national festival holidays wages attendance allowance and computation of daily wages dividing basic monthly pay by 26 days and other components by 30 days. This is one of the strong arguments placed on behalf of CFH agents that HRA is inclusive in wages payable under the settlement under reference i.e. dated 23-7-86.

2185 GI/92—4

20. As on today any industrial worker derives more satisfaction to see the amount computed separating towards his HRA amount whatsoever although by nature every individual directly or indirectly inclines to have higher and at a better

rate of his HRA. In view of above facts and prevailing peculiar circumstances, without any prejudice to applicability/coverage of National Wage Agreement as referred above date 12th June, 1989 on CFH workers I am inclined to feel that CFH workers of the pool are entitled HRA as under :—

I. These CFH workers would be entitled HRA @10% of basic monthly wages as worked out and agreed upon on 3-1-1990 by the CFH agents and Paradip Port Workers Union, provided a worker has worked not less than 15 days bookings in a month.

II. In case where worker has worked less than 15 bookings in a month, he would be entitled half of the HRA as worked out above. HRA @ 5% basic wages as mentioned above.

III. The maximum ceiling of HRA will be the HRA calculated on the basis of 30 bookings in a month.

IV. This HRA will be paid alongwith wages but reflecting in a clear term as "HRA".

This will be effective from 5th January, 1990 and continue till the workers of CFH pool would get better HRA under any other bilateral agreement or settlement or award or judgement of any Honourable Court etc.

21. So far attendance allowance is concerned, it has to be considered basing some settlements before coming to settlement. It is pertinent, rather more relevant to go to the recommendation of W.R. Committee as cited above in the claim statement and argument of union in brief. In brief the Committee recommended after giving a serious thought to the problem with a view to bringing uniformity in all major ports to such workers who are entitled attendance allowance @1/60 of monthly wages. This would be in consistent with the provision of lay off compensation under Industrial Disputes Act, 1947.

In the course of arguments the union had gone one step ahead and demanded attendance allowance which shall be equal to 50% of the total wages and Dearness Allowance as attendance allowance of CFH agents that these private traders may not be compared with management like port authority and their paying capacity. On behalf of CFH agents it was placed on arguments referring to the settlements dated 23rd July, '86 which covered entire work force of 1479 workers and these CFH workers in dispute from a small part of that workers. So they have no right and scope of going out of the term of settlement and it was emphasized that attendance allowance is inclusive in the wages. It was also mentioned in argument that the above settlement is no longer in force in view of the fact that expired according to the term of settlement.

The representatives of trade union rightly pointed out that right and privileges of workers cannot be reduced once it has been enjoyed for a considerably long time under the same management Under the settlement as referred above on principle agreed and paid the attendance allowance as per the settlement, treating attendance allowance as a component of wages. Under the settlement dated 23-7-86 as referred above wherein both the parties agreed that pool workers would be paid attendance allowance as a component of wages which was not been reflected separately! This is an admitted fact that the wages paid under settlement was consisted of different components like basic D.A., HRA and attendance allowance is one of them. These CFH workers are required to perform work in the premises of Paradip Port where similar work is done by similar categories of workers who get attendance allowance on a situation when they do not get booking. In this regard parties have given their view points and arguments citing the settlements and ports instruction.

It may be too far to stretch the demands and claim attendance allowance as the rate equal to compensation of lay off under the I.D. Act' 47. In view of the above, in a peculiar

system of working condition, I am inclined to veel and decide that these CFH workers of the pool are entitled attendance allowance @ of Rs. 7.50 per day for 7 days in a month as a maximum ceiling of attendance allowance.

This attendance allowance will be effective from 5-1-90 and continue till the workers get attendance allowance at a letter rate that may be because of bilateral agreement or settlement or award or any other decision of Hon'ble courts etc.

22. So far the calculation of piece rated incentive is concerned the learned counsel of CFH agents and office bearers of the trade unions placed their arguments wherein it is agreed by both the parties that a gang consisting of 8+1 persons are required to give their output/datum i.e. 36 metric tonnes and wherever the concerned gang would give more work, then they would be entitled to Rs. 21.95 per metric tonne as incentive. The question remains whether it would be effective from 5-1-90 or from 1-1-88 as mentioned by the representatives of CFH agents and unions respectively.

Incentive is payment in any form as a token of appreciation and encouragement or increasing productivity. Normally, the rate of payment towards incentive is worked out after a thorough examination on various factors before the commencement of the work in a given period of time so that the concerned workers would also come to know the benefit of extra work and their productivity.

In view of the above I feel that effective date of payment of these incentive would be from 1-1-89 which would strike the balance. This incentive would continue till they get better rate of payment of incentive arising out of some agreement or settlement or award or judgement of some Hon'ble Court on such matters.

The above decision is dictated and compared by me and given under my seal and signature.

THE PARTIES WILL BEAR THEIR OWN COSTS.

G. R. MAJHEE, Dy. Chief Labour Commissioner (Central)

and Arbitrator

नई दिल्ली, अगस्त, 1992

का०आ० 2377:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मोजाबोनी प्रृष्ठ आफ माइन्ज माफ हिन्दुस्तान कापर लिमिटेड के प्रबन्ध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुवंश में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-8-92 को प्राप्त हुआ था।

[संख्या एल-26012/12/90-आई आर (विविध)]

कै०वी०बी० उन्नी, डैस्क अधिकारी

New Delhi, the 19th August, 1992

S.O. 2377.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Mosaboni Group of Mines of Hindustan Copper Limited and their workmen which was received by the Central Government on the 19-8-92.

[No. L-26012/12/90-IR(Misc.)]

K.V.B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 42 of 1990

PARTIES :

Employers in relation to the management of Mosaboni Group of Mines of Hindustan Copper Ltd./Indian Copper Complex and their workmen.

APPEARANCES :

On behalf of the workmen—Shri B. Lal, Advocate and Shri D. K. Verma, Advocate.

On behalf of the employers—Shri J. P. Singh, Advocate.

STATE : Bihar

INDUSTRY : Copper Mines.

AWARD

Dhanbad, the 11th August, 1992

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-26012/12/90/I.R. (Misc.) dated, the November, 1990.

SCHEDULE

"Whether the action of the management of Mosaboni Group of Mines of Hindustan Copper Ltd./Indian Copper Complex in dismissing the services of Sri Ramashis Rajak, Sepoy w.e.f. 4-8-1989 is justified? If not, what relief Sri Rajak is entitled to?"

1. One Shri Ramashis Rajak, the concerned workman was appointed as Sepoy under the management of Mosaboni Group of Mines of Hindustan Copper Ltd./Indian Copper Complex, who on account of his misconduct was dismissed from the service with effect from 4-8-1989. It is stated that he was in 'C' shift duty in the night of 10th and 11th April, 1989 to guard the surface magazine. His main duty to check the locks and doors and to see that all the windows were shut. He was to be relieved by a Sepoy in 'A' shift duty on the following day i.e. on 11-4-89 at 6.00 A.M. The sepoy of 'A' shift duty on 11-4-89 arrived at 6.10 A.M. but he did not find the concerned workman at the magazine and as usual he checked the doors and windows of the magazine where the detonators were stored. It is said that on the rear of the magazine building he pushed the window and it opened. He sensed something wrong and thus he closed the shutter and went to inform the Security Officer. On information the stock of the detonators were checked by the officer and the staff of the store and it was found that 385 electric detonators were short. According to the management it was a case of theft as the windows were opened by removing the screw of the window panes and the screws were found on the window shelf. Accordingly one FIR was also registered to the Mosaboni P.S. and a case was instituted against the concerned workman.

2. The management after having considered the facts and circumstances drew up a chargesheet dated 12-4-89. The concerned workman submitted reply to the chargesheet alleging that no theft took place during his duty hours and that he had checked all the doors and windows of the magazine. However, the management was not satisfied with the reply and accordingly a domestic enquiry was held wherein he was found guilty. The management considered the report of the Enquiry Officer and then the concerned workman was dismissed from the service. The concerned workman then represented his case before the management to set aside the order of dismissal which was rejected. Thereafter he raised an industrial dispute before the ALC (C) Chaibasa which ended in failure giving rise to the present reference.

3. The concerned workman has filed W.S. denying the charges levelled against him. According to him he was illegally chargesheeted. Although no theft had taken place in his duty hours. The management without considering and without appreciating the reply of the chargesheet initiated domestic enquiry which was not conducted fairly and in accordance with the principles of natural justice. The facts alleging the theft of detonators was not proved even before the Police and accordingly a final report for this was submitted and the Police had registered another case as Mosaboni P.S. Case No. 4/90 under Section 409/120B of the I.P.C. against Shri S. N. Munshi, Manager, Surda Mine and others for misappropriating the Government property which is pending disposal. Accordingly the order of dismissal was not only illegal but it was unjustified. The concerned workman approached the management for his reinstatement and to set aside the order of dismissal. But the management finally refused to consider the case. In the circumstances it has been prayed that the Tribunal may be pleased to hold the dismissal of the concerned workman is not justified and he is entitled to be reinstated with full back wages.

4. The point for consideration would as to whether the concerned workman is entitled for reinstatement with full back wages.

5. It may be mentioned at the very outset that during the course of hearing the learned counsel for the workmen admitted the fairness and propriety of the domestic enquiry and accordingly the matter has been heard on merit.

6. Admittedly, the concerned workman was a permanent employee appointed as Sepoy under the management of Mosaboni Group of Mines of Hindustan Copper Ltd. He was in 3rd shift duty on 10-4-89 commencing from 10 P.M. to 6 A.M. and this fact has not been denied. It is alleged in the chargesheet that in the night intervening 10th and 11th April, 1989 when the concerned workman was on duty to guard the surface magazine a theft of 385 electric detonators took place and accordingly a chargesheet was issued for misconduct under clause 9x and 9e of the Company's Certified Standing Orders. The most vital portion of the chargesheet reads as follows :—

"Had you checked the doors and windows of Magazine at the time of duty ? The theft would have been checked in time."

7. From the language of the chargesheet it is crystal clear that the theft of detonators had taken place during the duty hours of the concerned workman and the same offence could have been checked had the concerned workman been particular in checking the doors and windows of the magazine. The concerned workman in reply to the chargesheet simply stated that he had checked the doors and windows of the magazine. He also stated that the doors were locked and the windows were closed. He stated that there was no theft in his duty.

8. Shri Jyoti Prasad Mal was the reliever of the concerned workman from duty. Admittedly, he reached duty at 6.10 A.M. although he was to reach at 6.00 A.M. He was examined in the enquiry where he stated that he did not find Shri Rajak on duty when he reached there at 6.10 A.M. Again he stated that he went to the magazine and found that the windows of the western side were not properly closed. He reported to Shri Kangali Babu, Explosive Checker. The magazine was checked and it was found that 385 detonators were stolen away. In this way the management was sure enough that theft was committed due to the negligence of the concerned workman. In other words had the concerned workman been vigilant and cautious in his duty there would have been no theft. This means the negligence and theft were closely related to each other. The word "Negligent" has no separate and independent entity. The question of negligence will arise if theft is committed. Had there been no theft there was no question of any theft nor the concerned workman would have been chargesheeted. At this stage the learned counsel for the management submitted that the concerned workman had left the place of duty before the arrival of Jyoti Prasad Mal his reliever and in that way he was negligent and so he was very well charged for the dereliction of duty. I think that was the version of Shri Mal the reliever of the concerned workman who had admittedly reached the place of duty

10 minutes late. He was not the superior officer to find fault of the concerned workman and no negligence can be attributed to the concerned workman only on the statement of Shri Mal, a co-worker.

9. In this way we find that the concerned workman was charged only because a theft had been committed in his duty hours. But surprisingly enough the story of theft was not proved either by the Enquiry Officer in the domestic enquiry or by the Police. The Police had registered as case vide Mosaboni P.S. Case No. 28/89 under Sections 461 and 379 of the I.P.C. (Ext. W-3). The FIR was to the effect that 385 Nos of electric detonators worth Rs. 1540 were missing from surface magazine at No. 3 shaft. The formal FIR is Ext. W-3/1. The Police after investigation submitted final report false (Ext. W-1). During the course of investigation it was revealed that the officials of the management after having entered into criminal conspiracy committed criminal misappropriation with respect to 385 electric detonators of the company and accordingly a separate FIR as said above was registered against the officials of the company including the concerned workman. Thus we find that the Police did not find it to be a case of theft rather it was a case of criminal misappropriation.

10. The Enquiry Officer while submitting his report (Ext. M-7) held that he had no materials to prove charge under clause 9, of the standing orders. He in his evidence stated that the management did not file before any document to show that actually theft of 385 detonators had taken place. The witness has proved a number of documents like the chargesheet, explanation submitted by the concerned workman, the enquiry proceeding enquiry report and the statement of the witness recorded by him during the enquiry. He also proved the order of dismissal. They have been marked Ext. M-1 to M-10. No certified standing order has been filed. Perhaps clause 9(X) speaks about the theft and this charge was not proved as stated by the Enquiry Officer in his report. It may be specifically noted that in the chargesheet there was no allegation that the concerned workman had himself committed theft. It was simply stated that detonators were missing due to negligence of the concerned workman. We find that no case of theft could be established but the Enquiry Officer held the concerned workman guilty of negligence. I have already held that the act of negligence cannot be attributed to the concerned workman when the theft was not proved.

11. In the domestic enquiry no person dealing with the stock of detonators was examined to show that prior to the alleged theft the stock position of the detonators was such and after theft it was so. In this view of the matter the learned enquiry officer was not justified in holding the concerned workman guilty of negligence. Ext. M-9 is the detail of the previous punishment inflicted upon the concerned workman, for misconduct on his part. Certainly previous misconduct can be looked into only when the present allegation is proved. I find that the management has miserably failed to prove any negligence on the part of the concerned workman.

12. Shri Kapildeo Tewary was examined before the E.O. He was on 'B' shift duty on 10-4-89 commencing from 2 P.M. to 10 P.M. He claims to have handed over charge to the concerned workman working at 10 P.M. and nothing wrong happened during his duty hours. In cross-examination he admitted that on 11-4-89 he absented from his duty without leave for 5 days. He explained that he had gone to search his child who had left the house without information. I think Shri Tewary had enough time to submit a leave application before going to search his missing child. However, he has denied suggestion that there was something wrong during his duty hours and he ran away out of fear. Any way, these statements do not carry any meaning when the offence of theft is not proved.

13. I have examined these aspect of the matter and I am to hold that the concerned workman was not guilty of any negligence and thus the order of dismissal passed by the management was not justified. Thus the order of dismissal is set aside and the management is directed to reinstate the concerned workman in his original job with full back wages and other consequential benefits from the date of his dismissal within one month from the date of publication of the Award.

नई दिल्ली, 19 अगस्त, 1992

का०आ० 2378:—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, पंजाब नैशनल बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, चार्डीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-8-92 को प्राप्त हुआ था।

[संख्या एल-12012/27/91-आई आर (बी-II)]
के०वी०बी० उन्नी, डैस्क अधिकारी

New Delhi, the 19th August, 1992

S.O. 2378.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workmen, which was received by the Central Government on 19th August, 1992.

[No. L-12012/27/91-IR(B-II)]
K. V. B. UNNI, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT, CHANDIGARH

Case No. 78/91

Sat Pal Singh Vs. Punjab National Bank.

For the workman—None.

For the management—M. S. Chauhan.

AWARD

Central Government vide gazette notification No. L-12012/27/91-IR. B-II, dated 25th June, 1991 issued U/s. 10(1)(d) of the I.D. Act, 1947 referred the following dispute to this Tribunal for adjudication :

“Whether the claim of Shri Satpal Singh that he was an employee of Punjab National Bank is justified? If so, whether he is entitled for permanent appointment in the Bank as driver? What other benefits if any, is the workman entitled to?”

2. In the present case neither workman nor his counsel has put up appearance after 15th October, 1991. Various Registered Notices were issued to the petitioner. Neither petitioner nor his counsel has put up appearance. It seems that they are not interested in pursuing with the case. The present reference is dismissed as default and is returned to the Ministry.

Chandigarh,

29-7-1992.

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 19 अगस्त, 1992

का०आ० 2379:—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, बैंक आफ बड़ोदा के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक

विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, नं० 2 बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-8-92 को प्राप्त हुआ था।

[संख्या एल-12012(86)/85-डी-II(ए)]
के०वी०बी० उन्नी, डैस्क अधिकारी

New Delhi, the 19th August, 1992

S.O. 2379.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal No. 2, Bombay as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workmen, which was received by the Central Government on 18-8-92.

[No. L-12012(86)/85-D.II(A)]

K. V. B. UNNI, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO 2, BOMBAY

PRESENT :

Shri P. D. Apshankar, Presiding Officer.

Reference No. CGIT-2/76 of 1985

PARTIES :

Employers in relation to the management of Bank of Baroda.

AND

Their workmen.

APPEARANCES :

For the Employer : Mr. K. V. Shah, Advocate.

For the Workman : Mr. K. V. Gadodia, Advocate.

INDUSTRY : Banking.

STATE : Gujarat.

Bombay, the 3rd August, 1992

AWARD

The Central Government by their order No. L-12012(86)/85-D. II(A) dated 20-12-1985 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :

“Whether the action of the management of Bank of Baroda, Ahmedabad in terminating the services of Shri Jethalal Shankarlal Gohel, peon of Nadiad Branch w.e.f. 11-7-1980, is justified? If not, to what relief is the workman concerned entitled?”

2. The case of the workman Shri J. S. Gohel, as disclosed from the Statement of Claim (Ex. W/2) filed by him in person, in short is thus :—

He joined the service in the bank of Baroda at Nadiad Main Branch in March, 1976 as a peon. He was working honestly and faithfully in the Bank. One Shri N. P. Rathod was also working as a peon along with him in the said branch. Shri Rathod, i.e. the other peon, opened his Savings Bank Account at Naroda, Ahmedabad, and withdrew the amount of Rs. 100 from his account of Nadiad Branch. The bank prepared the necessary M.T. i.e. the Main Transfer document. Shri Rathod, the other peon, wrote the figure 6100 in the place of the figure of Rs. 100, and sent it in bank cover to Naroda Branch, Ahmedabad Branch. Thereafter Shri Rathod withdrew the amount of Rs. 5900 by four instalments. Thereafter Shri Rathod again withdrew the amount of Rs. 130 from the Nadiad Branch, and sent the M.T. of Rs. 6130 to Naroda Branch. The second

M.T. created doubt in the mind of the Manager of the Naroda Branch, and he enquired at Nadiad Branch on telephone. Thereafter the other peon Shri Rathod confessed his guilt, and returned the amounts unlawfully withdrawn by him.

3. About an year thereafter, the bank lodged a complaint regarding the said Mail Transfer documents in the Police Station, Nadiad. A criminal case No. 4594/79 was then filed against the other peon Shri Rathod as accused No. 1 therein, and against the workman in question Shri J. S. Gohel, as accused No. 2. Thereafter the bank sent a letter to the workman in question asking him to give his explanation in the matter within two days for abetting the other peon Shri Rathod for fraudulently withdrawing the amounts. The workman in question replied to that notice, and stated that he did not know anything about the case, and that he was falsely involved therein. However, thereafter the bank terminated the services of the workman in question Shri J. S. Gohel on the ground of the loss of confidence w.e.f. 11-7-1980, and sent retrenchment compensation to him on 28-7-1980. At the time of the termination of his services, the criminal case was pending against him. As such the matter was sub-judice, and as the Criminal Court had not found him guilty of any offence, his termination of service is unjust, improper and illegal. No chargesheet was issued to him, and no domestic enquiry was held by the bank against him before terminating his services. The bank did not state in their letter regarding the termination of services as to how and why the bank had lost the confidence in him. After the termination of the workman's services, the Chief Judicial Magistrate of Nadiad by his Judgment dated 15-10-1982 acquitted the workman in question Shri Gohel, and convicted the other peon Shri Rathod. While terminating the services of the workman in question, the bank management has violated the provisions contained in Section 25F of the Industrial Disputes Act. While he was retrenched from services on 11-7-1980, the retrenchment compensation was paid to him not on the same day, but was paid on 28-7-1980. Therefore the action of the bank management in terminating his services is unjust, improper and illegal. The workman, therefore, lastly prayed that this Tribunal should set aside that order of termination of his services and should direct the bank management to reinstate him in services with full back wages and the continuity of services.

4. The Deputy General Manager, Central and North Western Gujarat Zone, Ahmedabad, by his Written Statement (M/6) contested the said claim of the workman, and in substance, contended thus :

The said workman Shri Gohel was appointed as a peon at the Nadiad branch of the bank in March, 1976. He had access to all the important documents of the bank including the Mail Transfers. Shri N. P. Rathod was working as a peon at the said branch of the bank. The other peon Shri Rathod opened the saving bank account at the Naroda Branch, Ahmedabad, and withdrew the amount of Rs. 100 therefrom. The Main Transfer was prepared for Rs. 100. However, Shri Rathod through the workman in question Shri Gohel inserted the figure '6', and made the figure of Rs. 100 to appear as 6100. Thereafter the other peon Shri Rathod withdrew the amount of Rs. 5900 from the Naroda Branch, Ahmedabad. Thereafter, the other peon Shri Rathod withdrew the amount of Rs. 130 from his Saving Bank Account and got prepared the Mail Transfer for Rs. 130. However, with the help of the workman in question Shri Gohel, the figure '6' was added, and the figure of Rs. 130 was made to appear as Rs. 6130. Thereafter, the Branch Manager of the Naroda Branch got suspicion, and he made an enquiry with the Manager of the Nadiad Branch on telephone. Thereafter, the other peon Shri Rathod confessed his guilt, and gave his confession in writing. Thereafter the other peon Shri Rathod repaid the amounts unlawfully received and recovered by him, to the bank. The bank thereafter got examined the figures and the words on the said two Main Transfers from a handwriting expert. The specimen handwriting of the workman in question was sent to the handwriting expert to compare the disputed figures on the Main Transfers with the figures and words in the handwriting of the workman in ques-

tion. The handwriting expert found that the altered and added figures and words in the Mail Transfers were in the handwriting of the workman in question. As the bank management had lost confidence in the workman in question, they terminated his services w.e.f. 19-3-1976 and paid him three months' pay in lieu of the notice and the necessary retrenchment compensation by way of abundant precaution. The services of the workmen were terminated as per Clause 19.12(c) of the First Bipartite Settlement of 1966. A Criminal case was filed by the Bank against the workman in question and against the other peon Shri Rathod.

5. The Bank Management further contended thus :

This Central Government Industrial Tribunal No. 2, Bombay has no jurisdiction to entertain and decide the present reference, as the cause of action has arisen out of the State of Maharashtra, and at Ahmedabad in the State of Gujarat. It is not true that the workman in question was discharging his duties honestly and faithfully. The accuse No. 1, i.e. the other peon Shri Rathod was convicted in the said Criminal case, while the accused No. 2, i.e. the workman in question was acquitted. Only because of the decision of a criminal court acquitting the accused No. 2, i.e. the workman in question, the order of termination of his services issued by the bank cannot be treated as null and void. The bank management did not violate the provisions of Section 25F of the Industrial Disputes Act, as the workman in question was simply discharged simpliciter. The action of the bank management in terminating the services of the workman in question Shri Gohel is quite just, legal and proper, and as such the workman is not entitled to reinstatement in service or to the back wages, as claimed by him. The bank management therefore lastly prayed for the rejection of the prayer of the workman in question.

6. The issues framed at Ex. 9 are :

- (1) Whether the present Central Government Industrial Tribunal No. 2 has jurisdiction to entertain the present reference ?
- (2) Whether the termination of the services of the workman Peon Shri Jethalal Shankerlal Gohel by the Bank of Baroda, without holding any inquiry against him, is just and proper ?
- (3) Whether the said Bank, while terminating the services of the said workman has violated the provisions of Section 25F of the Industrial Disputes Act ?
- (4) Whether the action of the management of Bank of Baroda, Ahmedabad, in terminating the services of Shri Jethalal Shankerlal Gohel, Peon of Nadiad Branch w.e.f. 11-7-1980 is justified ?
- (5) If not, to what relief is the workman concerned entitled ?
- (6) What Award ?

7. My findings on the said issues are :

- (1) Yes.
- (2) No.
- (3) No.
- (4) No.
- (5) As per the Award below.
- (6) As per the Award below.

REASONS

8. The workman in question Shri J. S. Gohel filed his affidavit (Ex. W/13) in support of his case, and he was cross examined on behalf of the bank management. Two witnesses were examined on behalf of the bank management, viz. Shri A. S. Saraiya, the officer of the bank, and Shri

D. M. Solanki, the Senior Manager of the Bank. These two witnesses filed their respective affidavits in support of the case of the bank management at Exs. (M/10) and (M-19), and both these witnesses were cross-examined on behalf of the workman in question.

9. ISSUE NO. 1.

According to the bank management, the present Central Government Industrial Tribunal No. 2, Bombay, has no jurisdiction to entertain and decide the present reference, as the cause of action arose, not in the State of Maharashtra, but arose in the State of Gujarat. However, the Central Government has already empowered this Tribunal at Bombay to decide the reference matters arising out of the State of Gujarat, and especially the cases arising from Ahmedabad Region. The Central Government by their order (Ex. 1) have clearly mentioned in the order of reference that the present Industrial Tribunal No. 2, Bombay shall decide the present reference. As such, the present Industrial Tribunal No. 2, Bombay has jurisdiction to entertain and decide the present reference.

10. The documentary evidence on record is thus :—

The Senior Manager of the bank by his letter dated 26th May, 1980 (Ex. W/3) asked the workman in question to submit his explanation regarding the fraudulently receiving all the amounts from Naroda Branch by the Mail Transfers by the other peon Shri Rathod. Accordingly the workman submitted his 'say' (Ex. W/4) on 27-5-1980, and stated that he did not know anything about the case in question, and that he has been falsely involved in that case. Thereafter the Regional Manager by his letter dated 11-7-1980 (Ex. W-5) terminated the services of the workman in question. This letter stated that :

"It has been decided to terminate your services in the Bank with immediate effect by paying you three months' pay and allowances in lieu of notice, which we hereby do. The reason for termination of your services is loss of confidence."

As such the services of the workman in question were terminated by the bank management on the ground of the loss of confidence in him. Admittedly, no chargesheet was issued to him, and no enquiry was held against him, before his services were terminated by the bank.

11. Exs. 20 and 20A are the Xerox copies of the Mail Transfers in question, wherein the figure 130 was made to appear as 6130, and the figure 100 was made to appear as 6100.

Ex. 12 is the admitted handwriting of the workman in question Shri Gohel, and he wrote the words five, six, seven, and thousand, and the figures 1 to 11 on that document. The workman admitted in his cross-examination that the figures and words on the document at Ex. 12, as above, are in his handwriting. This document containing the admitted handwriting of the workman and the said two Mail Transfers were sent to the handwriting expert by the bank management. The handwriting expert, i.e. the Associate Member of International Association for Identification by his report dated 24-10-1979 concluded that the figures 'six' added on the said two Mail Transfers were in the handwriting of the workman in question Shri Gohel. As such, the bank management lost the confidence in the workman and terminated his services.

Ex. M/11 is a xerox copy of the receipt dated 28-7-1980 by the workman in question stating that he had received the pay order for Rs. 1764.45, being the amount of three months' notice pay, and also had received the amount of Rs. 893.30 as the retrenchment compensation from the bank.

Ex. M/15 is the form of Declaration of Fidelity and Secrecy filled in by the workman in question at the time of entering in the services of the bank. This form stated that :

"I J. S. Gohel, do hereby declare that I will faithfully, truly and to the best of my skill and ability execute and perform the duties required of me as the employee of the bank."

However, according to the bank, the said workman had behaved to the contrary, and hence the bank terminated his services on the ground of the loss of confidence. By the Judgment dated 15-10-1982, the workman in question came to be acquitted, while the other accused Shri Rathod was convicted for the offences under Sections 407 and 467 of I.P.C. (Ex. W/17). Therefore, according to the workman, the action of the bank management in terminating his services was not just, proper and legal, and he was entitled to reinstatement in services.

12. According to the bank management, the workman in question Shri Gohel was simply discharged from the services, as they had lost the confidence in him. According to the bank management, the other peon Shri Rathod had given the statement in writing on 30-4-1978 that the figures of Rs. 100 and Rs. 130 were altered to Rs. 6100 and Rs. 6130 by Shri Gohel, i.e. the workman in question. Further, according to the bank management, the handwriting expert Shri Patel had concluded that the alterations in the figures of the two Mail Transfers were in the handwriting of the workman in question Shri Gohel, and as such he had forged those documents. Therefore, according to the bank management, because of the said two circumstances, they had lost the faith and confidence in the said workman, and hence they discharged him simpliciter. However, the discharge of the workman from service even on the ground of the loss of confidence casts a stigma on the career and character of the workman concerned. Therefore, it was necessary for the bank management to issue the necessary chargesheet to the workman regarding the alleged forged alterations, and to conduct the domestic enquiry against him after giving him proper opportunity to defend himself, and in case he was to be found guilty, then he could have been dismissed from services. However, this procedure was not followed by the bank. Hence, I find that the order of discharge passed by the bank management against the said workman is not just, proper, and legal. The discharge of the workman from services in the present case in fact amounts to a punishment imposed upon him. In the case reported in 1985 II ILJ page 181, the workman's services were terminated on the ground of the loss of confidence. In that case the Supreme Court held that :

"It is difficult to accept that when service terminated on the basis of loss of confidence the order of termination does not amount to one with stigma and does not warrant a proceeding contemplated by law preceding termination. Want of confidence in an employee does point out to an adverse facet in his character as the true meaning of the allegation is that the employee has failed to behave upto the expected standard of conduct which has given rise to a situation involving loss of confidence. It amounts to dereliction on the part of workman. If the termination is grounded upon conduct attaching stigma to the appellant, disciplinary proceedings were necessary as a condition precedent to infliction of termination as a measure of punishment."

Article 311(2) of the Constitution of India lays down that :

"No person who is a member of a Civil service of a State shall be dismissed or removed except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."

In the present case the workman in question was removed from service. However, the provisions of Article 311(2) of the Constitution of India were not followed in this case.

13. The bank management has relied upon the Clause 522(1) of the Shastri Award, which states that :

"In cases not involving disciplinary action for misconduct the employment of a permanent employee may be terminated by three months' notice or on payment of three months' pay and allowances in lieu of notice."

According to the bank management, they have paid the workman three months' pay and allowances in lieu of the notice as per the provisions of Clause 522(1) of the Shastri Award.

However, as noted above, the present case involved disciplinary action for misconduct, and as such the services of the workman in question cannot be terminated only by giving him three months' pay and allowances in lieu of notice. In the present case it was necessary to take the necessary disciplinary action against the said workman for his act of alleged forgery of the Mail Transfer documents. The bank management has further relied upon Clause 19.12 (C) of the First Bipartite Settlement of 1966, which stated that :

"In case the misconduct is of 'gross' type the workman may be simply discharged, with or without notice, or on payment of a month's pay and allowances in lieu of notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charge and where the bank does not, for some reason or other, think it expedient to retain the employee in question any longer in service. Discharge in such cases shall not be deemed to amount to disciplinary action."

However, in the present case the discharge of the workman in question by the bank management was by way of punishment. Hence the disciplinary action was necessary before the services of the workman in question could be terminated. Further, the view of the Supreme Court, as above, will prevail over the Provisions of 19.12(C) of the First Bipartite Settlement. Therefore the discharge of the workman in question without holding any domestic enquiry against him was not just, proper and legal.

Issue No. 2 is therefore found in the negative.

14. ISSUE NO. 3.

According to the union, while terminating the services of the said workman, the bank has violated the provisions of Section 25F of the Industrial Disputes Act, 1947. In the present case the management has given the said workman three months' pay and allowances in lieu of the notice, and also the necessary retrenchment compensation. The letter of the termination of the workman's services dated 11-7-1980 (Ex. W/5) stated that, "it was decided to terminate his services in the bank with immediate effect by paying him three months' pay and allowances in lieu of the notice, and further by way of abundant precaution the retrenchment compensation in terms of Section 25F of the Industrial Disputes Act is also being paid to him". It is true that the said workman received the necessary amount on 28-7-1980 (Ex. M/11). However as it was clearly mentioned in the letter of termination of the workman's services that the necessary amount of retrenchment compensation and the wages in lieu of notice is being paid to him, it cannot be said that the bank had committed any violation of the provisions contained in Section 25F of the Industrial Disputes Act, 1947.

Issue No. 3, is therefore, found in the negative.

15. ISSUE NOS. 4 AND 5

As noted above, as no departmental enquiry was conducted against the said workman, the action of the bank management in terminating his services with effect from 11-7-1980, is not just, legal and proper.

Issue No. 4, is, therefore, found in the negative.

As such he is entitled to reinstatement in services with effect from 11-7-1980. The workman has also claimed the back wages due from 11-7-1980, i.e. the date of the termination of his services.

However the workman stated in his cross-examination that :

"I am working as Labourer in an agricultural land. Whenever, I get the work I get about Rupees five to seven per day. For the rest of the days I worked as a Sweeper in the Zundal Village in place of my mother. I used to work there as my mother was an aged lady."

As such, it is seen from his cross-examination that after the termination of his services he was earning some amount. Hence he is not entitled to the full back wages. In case the management is directed to pay him half amount of the back

wages from the date of the termination of his services till he is reinstated in services, that would be advisable and in the interests of both the parties.

Issue No. 5, is, therefore, found accordingly.

16. The following Award is therefore passed.

AWARD

The action of the management of Bank of Baroda, Ahmedabad, in terminating the services of Shri Jethalal Shankarlal Gohel, peon of Nadiad Branch with effect from 11-7-1980, is not just, proper, and legal.

The Bank Management is hereby directed to reinstate the said workman in service with effect from 11-7-1980, and to pay him half the amount of the back wages due from 11-7-1980 till the date of his reinstatement in services, within three months. The workman be reinstated in service immediately.

The parties to bear their own costs of this reference.

P. D. APSHANKAR, Presiding Officer

नई दिल्ली, 20 अगस्त, 1992

का.आ. 2380.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एक्सप्रैरीमेंटल शुगर इंस्टीट्यूट कानपुर के प्रबन्धतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुवन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचपट की प्रकाशित करती है, जो केन्द्रीय सरकार को 19-8-92 को प्राप्त हुआ था।

[सं. एल-42011/4/89-प्राइंट आर (डीयू) (पीटी)]

के.वी. बी. उण्णी, डैस्क अधिकारी

New Delhi, the 20th August, 1992

S.O. 2380.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Experimental Sugar Instt. Kanpur and their workmen, which was received by the Central Government on 19-8-92.

[No. L-42011/4/89-IR(DU)(Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARIAN DEV, PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANDU NAGAR, KANPUR,

Industrial Dispute No. 185 of 1990

In the matter of dispute between :

Sri Ashok Misra, President Experimental Sugar Factory Union, 106/255 Gandhi Nagar, Kanpur.

AND

Director, Experimental Sugar Factory, National Sugar Institute, G. T. Road, Kanpur.

AWARD

1. The Central Government, Ministry of Labour, vide its notification no. L-42011/4/89.I.R. (D.U.) dt. 24-8-90 has referred the following dispute for adjudication to this Tribunal:—

Whether the demand of Experimental Sugar Factory Union for payment of bonus to 162 workers under payment of Bonus Act for the years 1982-83 to 1986-87 is justified ? If not to what relief the workers are entitled to and from what date ?

2. Whereas the reference order is in respect of 162 workmen, the list of workmen which was sent subsequently by the Ministry of Labour, Government of India, New Delhi contains only 159 names of workmen.

3. The industrial dispute on behalf of the workmen has been raised by Experimental Sugar Factory Union (hereinafter referred to as Union), through its President Sri Ashok Misra.

4. The case set up by the Union in short is that the management had paid bonus to the workmen except the workmen in question at the following rates during the period in question:—

| Year | Rate of Bonus Paid | |
|---------|--------------------|--------------------|
| 1982-83 | 15 days | Consolidated Wages |
| 1983-84 | , | " |
| 1984-85 | 18 days | " |
| 1985-86 | 20 days | " |
| 1986-87 | 23 days | " |

The Union alleges that previously these workmen had filed a petition under section 33C(2) I.D. Act of computation of bonus for the year 1982-83, 1983-84 and 1984-85, before this court but the said petition was dismissed by this court by means of its order dt. 3-2-88 on the ground that the same was not maintainable as the matter raised by them constituted an industrial dispute for which a reference be got made u/s 10(1) of the Industrial Disputes Act, 1947. While disposing of the said petition under Section 33C(2) I.D. Act, the court held Experimental Sugar Factory, Kanpur as an Industry within the meaning of Section 2(j) of the Act and observed that the management of the Experimental Sugar Company, Kanpur should consider the claim of these workmen to bonus sympathetically. After the disposal of the said petition these workmen approached the management through their Union in this regard but the management refused to pay any bonus to them. The Union has, therefore, prayed that the Tribunal should direct the management of the Experimental Sugar Factory Kanpur to pay bonus to these workmen at the above rates, with interest at the rate of 16 per cent per annum.

5. The case is contested by the management of the Experimental Sugar Factory Kanpur. The management plead that the provisions of Payment of Bonus Act vide Section 32(iv) do not apply to the Experimental Sugar Factory Kanpur, which is a part and parcel of the National Sugar Institute, Kanpur run under the authority of the Department of Food, Government of India. According to the management it was so held by this Court to LCA 7/87 to which reference has been made by the Union in the claim statement. In fact the workmen are Seasonal Employees of the National Sugar Institute, Kanpur and as such orders of Government of India regarding payment of bonus to other regular employees are not applicable to them. Thus the workmen have no case at all to bonus against the management.

6. In support of its case, the Union has examined its President Sri Ashok Misra, no evidence has been adduced by the management in the case.

7. The copy of order dt. 3-2-88 passed in LCA No. 7/87 referred to by the Union in the claim statement has not been filed by the Union. It has, however, been filed by the management. In the said case it was held by this court that Experimental Sugar Factory Kanpur, is an Industry. This finding which was given in the said case has not been challenged even by the management's authorised represen-

tative in the present case. The fact that the workmen are Seasonal Labour is admitted by the President of the Union in his cross examination. It has further been deposed by him that the Factory does not run for the whole of the year. Some time it runs for 60 days some times for 80 days and some times for 90 days in a year. He has also deposed that during off season the Seasonal Labour is paid detaining allowance category wise. Some are paid 50 per cent of their wages and some are paid 30 per cent of their wages and so on. This fact has also not been challenged before me during the course of arguments by the authorised representative for the management. The management has simply resisted the claim of the Union on behalf of the workmen on the ground that vide section 32(iv) the provisions of Payment of Bonus Act do not apply to the Experimental Sugar Factory, Kanpur. Section 32(iv) of the Payment of Bonus Act lays down that nothing in this Act shall apply to the employees employed by an Establishment engaged in any industry carried on by or under the authority of any Department of the Central Government or State Government or a local Authority.

8. To counter the said plea of the management Sri M. Lal, the authorised representative for the Union, has argued that the provisions of Payment of Bonus Act, do apply to the experimental Sugar Factory, Kanpur and in support of his arguments he has relied upon certain Rulings and Gazette Notification.

9. Sri Lal has referred to the ruling in the case of the Managing Director, Chalhan Vibhag Sahkari Khandya Udyog Versus Government Labour Officer and others, 1981 SCC (I&S) 290 in which it was held that retaining allowance payable to Seasonal Workers during off season in seasonal establishment of a Sugar Factory his salary or wage within the meaning of Section 2(21) of the Payment of Bonus Act. This proposition of law was laid down by the Hon'ble Supreme Court has not been challenged by the authorised representative for the management. Some other ruling cited by Sri Lal were on the point whether or not Experimental Sugar Factory, Kanpur is an Industry within the meaning of section 2(j) I.D. Act. Since the management do not dispute the fact that it is an industry within the meaning of section 2(j) of the I.D. Act, I need not refer to these rulings.

10. As already said by me the only point to be determined in this case is whether or not the Experimental Sugar Factory, Kanpur falls within the category of Industries excepted/excluded by means of section 32(iv) of the Act. For this what we have to consider is whether it is an industry carried on by an authority of any Department of Central Government or a State Government etc. To me it is clear as day that the Experimental Sugar Factory which is part and parcel of National Sugar Institute Kanpur is run by the Department of Food, Ministry of Food and Civil Supplies, Government of India. If it were so that despite the fact that it is an Industry within the meaning of section 2(j) of the I.D. Act, the Union/workmen will not be entitled to claim any bonus. This is so even if it is admitted that Seasonal Labour is also entitled to the benefits of the Payment of Bonus Act. It is within the discretion of the Government of India to give or not to give bonus to the Seasonal Labour.

11. Sri M. Lal has placed before me the Gazette of India Extra Ordinary dated 29-12-89. At pages 5 to 8 are given the summary of recommendation of IIIrd Wage Board for Sugar Industry. It is laid down that the recommendation of the Board shall Govern the service conditions of all employees falling within the definition of workmen as contained in the Industrial Disputes Act, 1947, as amended from time to time and workers of other kind referred to in para 1. There is no doubt about the fact that Seasonal Labour working in the Experimental Sugar Factory are workmen within the meaning of Sec. 2(j) of the I.D. Act, 1947.

12. To my mind these recommendations of the III Wage Board for Sugar Industry to which Sri Lal has invited may attention do not advise the case of the workmen which has been espoused by the Union. Firstly we do not know whether these recommendations have been accepted by the

Central Government/Statae Government, secondly there is nothing in these recommendations to show that the Wage Board has also recommended for the deletion of clause IV from section 32 of the Payment of Bonus Act. Thirdly the claim before this Tribunal is of the period upto 1986-87, whereas the recommendation appear in the Extraordinary Gazette dt. 29-12-89. There is nothing in these recommendation to show that the Wage Board have recommended that the recommendation made should be given retrospective effect. Lastly, it appears to me that the recommendations were made in respect of Sugar Indusry in General. In this connection I would like to refer to para 19 of the recommendation. It is that the bonus is payable to a worker in terms of the provisions of Payment of Bonus Act, 1972 as amended from time to time. It does not say as already observed by me above, that clause (iv) of section 32 should be deleted. I have not been shown by Sri M. Lal that this clause has ever been deleted from section 32 of the Payment of Bonus Act.

13. In view of the above discussions of evidence and law I find that the Union/workmen have no claim to bonus for the years 1982-83 to 1986-87, and as such they are held entitled to no relief.

14. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 20 अगस्त, 1992

का.आ. 2381.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे, लखनऊ के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-8-92 को प्राप्त हुआ था।

[सं. एल-41012/43/88-डी II (बी) (पीटी)
दृ. बी. बी. उण्णी, डैस्क अधिकारी

New Delhi, the 20th August, 1992

S.O. 2381.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Railway, Lucknow and their workmen which was received by the Central Government on 19-8-1992.

IL-41012/43/88-D.II (B)(Pt.)
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI ARJAN DEV PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 154 of 1989

In the matter of dispute between :

Zonal Working President,
Uttar Railway Karamhari Union
96196 Roshan Bajaj Lane
Ganesh Gani, Lucknow.

AND

Deputy Chief Mech. Engineer (Workshop)
Northern Railway.
Alambagh, Lucknow.
2185 GI/92—5

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-41012/43/88-D-2(B) dated 13-6-89 has referred the following dispute to this Tribunal—

Whether the Dy. CME (Workshop), Northern Rly. Lucknow was justified in removing Sri Vachaspati Sharma, Highly Skilled Gr. II Welder w.e.f. 2-1-1987? if not, what relief the workman was entitled to?

2. The industrial dispute on behalf of the workman Shri Vachaspati Sharma has been raised by Uttar Railway Karamhari, Union, Lucknow, (hereinafter referred to as Union), through its Zonal President.

3. The case of the Union in brief is that on 15-4-84, while the workman was working as highly grade II Welder in the Workshop he fell ill. During the period of his illness from 15-4-84 to 12-12-86 he submitted a number of medical certificates on different dates. Copies of these medical certificates are annexures I to VI and copies of receipt of registration and certificates of postings are annexures IA to VA to the claim statement. During his absence the management started disciplinary proceedings against him for his alleged unauthorised absence. The management issued a chargesheet against him on 25-4-85. From the reply dt. 3-11-87, copy annexure XI to the claim statement filed by the management before the ALC(C) Lucknow he came to know that the management had issued a show cause notice to him which was returned undelivered to the management. The letter referring to the penalty of removal from service vide order dt. 2-4-86 passed by the disciplinary authority against him was received by him on 12-12-86. It is annexure VII to the claim statement. He reported for resumption of duty with certificate of illness dt. 12th December 1986 annexure VII to the claim statement but he was not allowed to do so. He, therefore, filed an appeal copy of which is annexure IX to the claim statement before the Chief Workshop Engineer (N.R.) Delhi, who was his appellate authority, but the same was rejected by the appellate authority and the fact was made known to him by the Dy. Chief Mech. Engineer (Workshop), Alambagh, Lucknow vide his letter dt. 20-5-87, copy annexure XII. The Union alleges that the inquiry was held ex parte by the E.O. inspite of his knowledge that the workman had been suffering from disbalance and was unable to defend himself. Hence, the inquiry was not conducted by the E.O. fairly and properly in accordance with the principles of natural justice. The Union further alleges that the order passed by the disciplinary authority and the order passed by the appellate authority are both non speaking orders. Further with the order of removal from service the copy of inquiry proceedings were not furnished to the workman. In any case, the punishment of removal from service awarded to the workman is highly disproportionate to the charge.

3A. The Union has, therefore, prayed that the order of punishment be set aside and the workman be reinstated in service with full back wages and all consequential benefits.

4. The case is contested by the management. The management plead that the workman had been very irregular in attendance and had also been habitual absentee. Previously he remained on unauthorised absence from 28-3-82, whereupon as a result of the disciplinary proceedings taken against him. The disciplinary authority vide his order dt. 7-10-82 awarded him the punishment of stoppage of 6 sets of passes and 12 sets of PTOs, on appeal the appellate authority in its order observed that his leave record confirmed that he was habitual of availing leave. With this observation the appellate authority confirmed the order of punishment passed against him by the disciplinary authority. On review the competent authority, purely on grounds of compassion reduced the punishment awarded to the workman stoppage of two sets of passes and 4 sets of P.T.Os. Again he became absent w.e.f. 13-6-83, whereupon he was served with a major penalty chargesheet. The disciplinary authority let him off with a warning after taking a lenient view.

5. The management further plead that SSITF Section 66 means of his letter dt. 31-12-84, informed that the workman had been absent since 16-4-84 due to which he was facing great difficulty in his daily work. On the said letter a major penalty chargesheet dt. 25-4-85 was issued to the workman

and sent at his home address. It was received by the workman on 29-4-85. When no reply to the chargesheet was received for two months, as per Rules, the inquiry officer was appointed by the disciplinary authority vide his order dt. 10-7-85. The copy of the same was also sent to the workman by post at his home address. The inquiry officer fixed the date and issued a letter dt. 7-8-85 to the workman by registered post acknowledgement due but the same was returned back undelivered by the authority with the remark refused. In the circumstances there was no alternative left with the E.O. except to proceed with the inquiry ex parte. The inquiry officer found the workman guilty of the charge. The disciplinary authority accepted the findings given by the E.O. and awarded the punishment of removal from service. The workman was served with removal order dt. 2-4-86 alongwith all the enclosures such as copy of the inquiry proceedings. The order of punishment was sent to the workman at his home address but the same was received back as undelivered from the postal authorities with the remark :—

Not met on 5-4-86, 7-4-86, 8-4-86, 9-4-86 & lastly on 10-4-86. Praptikarta ke ghar bar bar jane par maujud nahj milta atah vapas hai.

According to the management the inquiry was conducted properly as per rules. In fact the workman deliberately avoided to participate in the inquiry proceedings. The orders passed by the disciplinary authority and the appellate authority are perfectly valid orders.

6. In its rejoinder the Union alleges that the previous instances to which the management has referred are irrelevant for the purposes of deciding this case. Reference to previous instances show that the Rly. Administration was prejudiced against the workman. So far as the present matter is concerned the workman was granted casual leave for going home on 14-4-84 upto 16-4-84. The Union further alleges that after the letter of the F.O. intimating the date of inquiry to the workman was returned undelivered the management should have got the notice of the date affixed either at the residence of the workman or should have got it published in the Local Newspaper. Further after the close of the inquiry the findings should have been sent to him to enable him to submit his written defence.

7. In support of their respective cases both sides have led oral as well as documentary evidence. Whereas the Union has examined the workman, the management have examined Sri R. C. Srivastava, A.P.O.

8. In this case both sides have filed written arguments. In his written arguments Sri B. D. Tewari, has raised mainly two points. First, he has said that the workman was sick and that medical certificates regarding his sickness were sent to the Rly. Administration during the period of his illness. Secondly he has said that the punishment awarded to the workman is too harsh. Let us consider the two points one by one.

9. On the first point we have simply to see whether workman was sick and whether he or some body on his behalf had sent medical certificates regarding his illness to the Rly. Administration.

10. I may state here that it is the admitted case of parties that the inquiry was held ex parte against the workman. With the claim statement the Union has filed the photostat copies of medical certificate annexure I to VI and photostat copies of the postal receipts marked annexures II-A to V-A.

11. In his examination-in-chief the workman has made an attempt to prove the above documents. He has deposed that on 16-4-84, medical certificate for the period 15-4-84 to 21-1-85 photocopies of which is annexure I to the claim statement was sent to the Rly. Administration. He has deposited that annexure II to V are also the photostat copies of the medical certificates, which were sent under certificate of postal to the Rly. Administration.

12. Annexure I to the claim statement is the photostat copy of sickness certificate dt. 21-8-85 issued by some doctor holding Ayurvedic Degree. When confronted with this certificate during his cross examination the workman deposed that its duplicate copy of the medical certificate issued to him by doctor on 21-1-85. He himself put the date 21-1-85 after putting his signatures. He admit that the word duplicate is not

written on this certificate. According to him he procured it from the doctor by way of proof of his illness. The certificate, I may state here, is for the period 15-4-84 to 21-1-85. When questioned about the medicines given to him by the doctor, he has said that he does not know what medicines were given to him. He has admitted that he even does not possess the prescription of the doctor. This medical certificate he says was sent by his wife by registered post and annexure I-A is the photostat copy of the postal receipt of the registration.

13. Annexure 2 is the photostat copy of medical certificate dt. 24-9-85 issued by one Dr. Harish Chand Yadav of Bulandshahar. Annexure 3 is the medical certificate dt. 24-4-86, issued by one Dr. R. C. Sharma of Khurja, annexure IV is the photostat copy of medical certificate dt. 25-4-86 issued by one Dr. Mohan Lal of Basudev Clinic & Nursing Home Khurja. The photostat copies of other two certificates annexures V & VI bears the date 26-8-85 & 12-12-86. Both these certificates purports to have been issued by Dr. Mohan Lal of Basudev Clinic & Nursing Home Khurja. In his cross examination, the workman says that those medical certificates were sent to the Rly. Administration by the members of his family. Then he comes out with a normal statement. He says that copies of these medical certificates which were sent to the Rly. Administration have not been filed in this case. According to him it was only after he had recovered that he had obtained medical certificates copies of which are annexures I to V. He further says that he cannot tell on what date he got certificates from the doctors. These certificates were issued by the doctor in that dates. This belies the earlier statement made by him as regard to the certificate annexure I to the claim statement about which he had earlier said that it was issued to him by the doctor on 21-1-85. Annexures 1-A is the photostat copy of the postal receipt of registration and annexures II-A to V-A are the photostat copy of the certificates of posting. He admits that the dates written in his postal receipt/documents are illegible. In annexure 1-A even the name of the addressee is illegible.

14. On the other hand the management witness have denied the receipt of any medical certificate by the Rly. Administration.

15. To prove that the workman was prevented by sufficient cause to participate in the inquiry, the Union has not examined any doctor. The Union has not even examined the wife and any of the children of the workman, who vide his cross examination had sent the medical certificates by post to the Rly. Administration. We have also seen that the dates of posting on the photostat copies of the postal receipt of registration and certificate of posting are illegible. The Union could have filed the originals of these postal documents. Further no reliance can be placed on the photostat copies of the medical certificates annexure I to V, as they are not copies of the medical certificates alleged to have been sent by the members of the family of the workman to the Rly. Administration. As said above, according to the workman they were obtained by him after he had recovered from his illness in back dates. Thus the Union has failed to prove that the workman was ill and further that any medical certificate was ever sent by any member of the family of the workman to the Rly. Administration.

16. In the written statement it has been pleaded by the management that the workman received a chargesheet dt. 25-4-85 on 27-4-85. It was sent to him by registered post acknowledgement due. Ext. M-15 is the copy of acknowledgement due receipt. As against it, the workman has deposit that he does not remember, whether or not, during his illness any chargesheet was received by him. Thus there is no positive denial from his side.

17. Ext. W-18, is the copy of letter dt. 7-8-85, from the F.O. to the workman informing him that 21-8-85 had been fixed as the date in the inquiry. It was made clear by him in his letter that in case, the workman failed to attend the inquiry he would proceed ex parte against him.

18. Ext. W-19, is the photostat copy of the letter and the acknowledgement due receipt. It shows that on 12-8-85 and 13-8-85 a postman went to deliver the registered letter to the workman. In the date 12-8-85 there appears an endorsement

not met and in the date 13-8-85 there appears endorsement refused. So the letter of the E.O. which was sent to the workman by registered post at his address was returned as undelivered.

19. It has also been said that the proceedings of the inquiry and the findings of the inquiry officer were not enclosed with the order of punishment at 2-4-86, which was ultimately served on the workman on 17-12-86. The Union has itself referred to it in para (3) of the claim statement and has filed the copy of order of punishment as annexure VIII. The own documents of the Union shows that the proceedings with the findings of the F.O. were enclosed with the order of punishment. So I also do not find any force.

20. In view of the above discussion of evidence, it cannot be held that the inquiry was not conducted fairly and properly in accordance with the Railway Servants (Discipline & Appeal) Rules, 1968.

21. Next comes the question whether the punishment awarded to the workman is too harsh. Some rulings have been filed by Sri B. D. Tewari, with his written arguments but after going through these rulings, I find that they have no application to the facts of the present case.

22. First ruling is Scooter India Limited, Lucknow, Versus Labour Court, Lucknow, 1989 SSCE (L&S). It was the case where all the charges relating to the case of major misconduct were proved against the workman. It was observed by the P.O., of the Labour Court that the workman unfortunately to blame himself for much of the bad blood which has developed between him and the management and, therefore, his conduct motivated by ideals which are not relevant has been far from satisfactory. In so far as it was rough, bordering on the rudeness and with highly exaggerated sense of his duties, after making these observations back wages to the extent of 75 per cent were allowed to the workman. It was held by the Hon'ble Supreme Court that it cannot be said that the Labour Court had exercised its powers u/s 6(2-A) of the Act in an arbitrary manner.

23. The other rulings are on the point where the termination of service is for unsatisfactory performance. The question is whether the present case is a fit one for interference in the order of punishment u/s 11-A I.D. Act. It is even admitted to the workman that he remained absent from 15-4-84 till 17-12-86. The management have led evidence to show that the workman had been a habitual absentee, even on previous two occasions he was served with major penalty chargesheet regarding his unauthorised absence and once although he was awarded the punishment of stoppage of six sets of passes and 12 sets of PTOs, the reviewing authority purely on compassionate ground reduced the punishment of stoppage of two sets passes and 4 sets of PTOs. Second time he was let off with a warning. The present is the third occasion. Looking to these facts, I am of the view, that the punishment awarded to him does not call for any interference. A person who is in the habit of absenting himself without any cause is nothing but a burden on the employer.

24. Held that the action of the management of Northern Railway in awarding to the workman the punishment of removal from service is justified. Consequently the Union-workman is entitled to no relief.

25. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 20 अगस्त, 1992

का.आ. 2382.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसारण में, केन्द्रीय सरकार द्वीपीय एम वी एम वी नांगल टाउनशिप, देश प्रबन्धनतंत्र के मंत्रद्वं नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-8-92 को प्राप्त हुआ था।

[म.ए.र-42012/20/91-प्राई आर (इंड्यू) (पीटी)]

के.वी.वी. उण्णी, डैस्क अधिकारी

New Delhi, the 20th August, 1992

S.O. 2382—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of B.B.M.B. Nangal Township and their workmen, which was received by the Central Government on 19-8-92.

[No. L-42012/20/91-IR(DU)(Pl.)]
K. V. B. UNNI, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 125/91

Govind Singh Vs. B. B. M. B.

For the workman—Shri R. K. Singh.

For the management—Shri C. Lal.

AWARD

Central Government vide gazette notification No. L-42012/20/91-IR DU dated 26th of September, 1991 issued U/s. 10(1)(d) of the I.D. Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Chief Engineer, Bhakra Beas Management Board, Nangal Township, in terminating the services of Shri Govind Singh son of Shri Bir Singh, w.e.f. 1st July, 1987, is legal and justified ? If not, to what relief the concerned workman is entitled and from what date?"

2. Present case was fixed at Nangal on day to day hearing basis. Mr. S. P. Shah appearing on behalf of the workman Govind Singh has made statement that matter has been amicably settled with the respondent management and no dispute award be passed.

In view of the statement made by Shri S. P. Shah a No Dispute Award is returned to the Ministry.

Chandigarh,
Camp at Nangal.

ARVIND KUMAR, Presiding Officer.

नई दिल्ली, 20 अगस्त, 1992

का.आ. 2383.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसारण में, केन्द्रीय सरकार द्वीपीय एम वी एम वी नांगल टाउनशिप, देश प्रबन्धनतंत्र के मंत्रद्वं नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-8-92 को प्राप्त हुआ था।

[सं. एल-42012/67/88-डी II(बी) (पीटी)]
के.वी.बी. उणी, डैस्क अधिकारी,

New Delhi, the 20th August, 1992

S.O. 2383.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of B.B.M.B., Nangal Dam and their workmen, which was received by the Central Government on 19-8-1992.

[No. L-42012/67/88-D. II(B) (Pt.)]
K. V. B. Unny, Desk Officer.

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, CHANDIGARH.

Case No. I. D. 91/89

Narinder Kumar Vs. Bhakra Beas Management Board.
For the Workman : Shri R. K. Singh.
For the Management : Shri C. Lal.

AWARD

Central Government vide Gazette Notification No. L-42012/67/88-D. 2(B), dated 24th May, 1989 issued U/S 10(1)(d) of the I.D. Act, 1947 referred the following dispute to this Tribunal for adjudication :—

"Whether the action of the Es. Eng., BBMB Nangal Dam in terminating the services of Shri Narinder Kumar on daily wages w.e.f. 24-4-1985 is legal and justified ? If not, to what relief the concerned workman entitled and from what date ?"

2. Present case was taken up at Nangal on day to day hearing basis. Mr. R. K. Singh authorised representative of the workman has made statement that they do not want to pursue with the present reference and same may kindly be returned to the Ministry.

In view of the statement made by the rep. of the workman Shri R. K. Singh the present reference is returned to the Ministry.

Chandigarh.
Camp Nangal, 21-5-1992.

ARVIND KUMAR, Presiding Officer,
Tribunal-cum-Labour Court, Chandigarh.

नई दिल्ली, 20 अगस्त, 1992

का.आ. 2384.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 18 के अनुसरण में, केन्द्रीय सरकार बी.बी.एम.बी. के प्रबन्धतंत्र में संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-8-1992 को प्राप्त हुआ था।

[सं. एल-42012/5/91-प्राई ग्रा. (टी.म.) (पीटी)]
के.वी.बी. उणी, डैस्क अधिकारी

New Delhi, the 20th August, 1992

S.O. 2384.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of B.B.M.B. and their workmen, which was received by the Central Government on 19-8-1992.

[No. L-42012/5/91-IR (D.O.) (Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING
OFFICER, CENTRAL GOVERNMENT, INDUSTRIAL
TRIBUNAL -CUM-LABOUR COURT, CHANDIGARH.

Case No. I. D. 119/91

Mahesh Vs. Bhakra Beas Management Board.

For the Workman : Shri R. K. Singh.

For the Management : Shri C. Lal.

AWARD

Central Government vide Gazette Notification No. L-42012/5/91-IRDU, dated 20th September 1991 issued U/S 10(1)(d) of the I.D. Act, 1947 referred the following dispute to this Tribunal for adjudication :—

"Whether the action of the management of Bhakra Beas Management Board in terminating the services of Shri Mahesh S/o. Shri Kirpal is justified ? If not, to what relief is the workman concerned entitled ?"

2. Present case was taken up today at Nangal on day to day hearing basis. Shri Mahesh the petitioner has filed settlement Ex. C-1 and endorsed it while making statement. In Ex. C-1 he has stated that the dispute has been settled with the Management and case been allowed to be withdrawn and this has been done with the free consent and proper understanding.

Mr. Harmesh Chand appearing on behalf of the respondent management has also made similar statement and also stated that the petitioner will be taken on duty on daily wages without any back benefits. Whenever his turn will come his service will be regularised. He has also stated that upon taken on daily wages his services will not be terminated illegally.

In view of the statement made by the respective parties and the settlement Ex. C-1 and condition stat'd by the rep. of the management, present reference is disposed of accordingly, and returned to the Ministry.

Chandigarh.
Camp at Nangal, 22-5-1992.

ARVIND KUMAR, Presiding Officer.

नई दिल्ली, 20 अगस्त, 1992

का.आ. 2385.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.बी.एम.बी. नंगल डाइविशन हे प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-8-1992 को प्राप्त हुआ था।

[सं. एल-42012/23/91-प्राई ग्रा. (टी.म.) (पीटी)]

के.वी.बी. उणी, डैस्क अधिकारी

New Delhi, the 20th August, 1992

S.O. 2385.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of B.B.M.B., Nangal Township and their workmen, which was received by the Central Government on 19-8-1992.

[No. L-42012/23/91-IR (DU) (Pt.)]

K. V. B. UNNY, Desk Officer.

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

I. D. NO. 134/91.

Sukhchain Singh V/s. BBMB

For the Workman : Workman in person.

For the Management : Shri C. Lal Sarin.

AWARD

Central Government vide Gazette Notification No. L-42012/23/91-IR (DU), dated 27th September, 1991 issued U/S 10(1)(d) of the I. D. Act, 1947 referred the following dispute to this Tribunal for adjudication :—

"Whether the action of the Chief Engineer, Bhakra Beas Management Board, Nangal Township in terminating the services of Shri Sukhchain Singh son of Shri Dalip Chand is legal and justified ? If not to what relief the concerned workman is entitled and from what date ?"

2. Present case has been amicably settled by the parties. Sukhchain Singh workman has made statement that the management has given him offer of appointment as chowkidar on regular basis in the scale of Rs. 750-1350 with initial start of 770/- as basic pay plus usual allowances as admissible from time to time. He has also stated that he forgave us his claim for back wages.

Shri C. Lal appearing on behalf of the management has stated that this proposal is accepted and settled. Offer of appointment has been given to the petitioner in Court.

3. In view of the statement made by the respective parties since the respect. Management has given him offer of appointment in the Court itself for the post of Chowkidar on regular basis in the pay scale of Rs. 750—1350 with initial start of Rs. 770/- as basic pay plus usual allowances as admissible from time to time and for this the petitioner has forgone his dues and back wages a no dispute award is returned to the Ministry.

Chandigarh.

Camp Nangal, dated 16-7-1992.

ARVIND KUMAR, Presiding Officer.

नई दिल्ली, 20 अगस्त, 1992

का.आ. 2386.—ओद्योगिक विवाद अधिनियम, 1917 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार द्वारा एम.बी. भाष्टा डैम, नांगल टाउनशिप के प्रबन्धताल के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण चंडीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-8-1992 को प्राप्त हुआ था।

[सं. एम-42012/70/90-आई आर (टी यू) (पोटी)]

कौवोंगा उपाय, डैम रोड़ 11

New Delhi, the 20th August, 1992

S.O. 2386.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Kendriya Vidyalaya No. 2, No. 3 BRD, Chandigarh and their workmen, which was received by the Central Government on 19th August, 1992.

[No. L-42012/179/90-IR(DU)(Pt.)]

K. V. B. UNNI, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH,

Case No. 74/91

Ram Kishan Vs. Kendriya Vidyalaya.

For the workman—None.

For the management—Rajesh Kumar.

AWARD

Central Government vide gazette notification No. L-42012/179/90/IR (DU) dated 14th June, 1991 issued U/s. 10(1)(d) of the I.D. Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of Principal, Kendriya Vidyalaya No. 2, No. 3 BRD, Chandigarh in terminating the services of Ram Kishan, Group D employee w.e.f. 26th October, 1987 is justified ? If not, what relief he is entitled to?"

2. In the present case right from the beginning neither workman nor his counsel has put up appearance. Various registered notices have been sent but none appeared. It seems that the workman is not interested to pursue with the present reference. The present reference is dismissed in default and returned to the Ministry.

Chandigarh,
29-7-1992.

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 20 अगस्त, 1992

का.आ. 2387.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार द्वारा एम.बी. भाष्टा डैम, नांगल टाउनशिप के प्रबन्धताल के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण चंडीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-8-1992 को प्राप्त हुआ था।

[सं. एम-42012/70/90-आई आर (टी यू) (पोटी)]

कौवोंगा उपाय, डैम रोड़ 11

New Delhi, the 20th August, 1992

S.O. 2387.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the

management of B.B.M.B. Bhakra Dam, Nangal Township and their workmen, which was received by the Central Government on 19th August, 1992.

[No. L-42012/70/90-IR(DU)(Pt.)]
K. V. B. UNNI, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 186/90

Shiv Shankar Vs. Bhakra Beas Management Board.
For the workman—Shri R. K. Singh.
For the management—Shri C. Lal.

AWARD

Central Government vide gazette notification No. L-42012/70/90-IR (DU) dated 29th November, 1990 issued U/s 10(1)(d) of the I.D. Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of B.B.M.B. Bhakra Dam Nangal Township in denying employment to Shri Shiv Shankar son of Shri Ram Dularey skilled labour in their Rose Garden Section of the Bhakra Dam Division w.e.f. 1st March, 1989 is legal and justified? If not to what relief the concerned workman is entitled and from what date?"

2. Present case was taken up at Nangal on day to day hearing basis Mr. R. K. Singh, A.R. of the workman has made statement that workman is not traceable and therefore, he does not want to pursue with the present reference and same may be returned to the Ministry.

In view of the statement made by Shri R. K. Singh, A/R of the workman, present reference is returned to the Ministry.

Chandigarh,
Camp at Nangal.
21-5-1992.

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 19 अगस्त, 1992

का.आ. 2388 —औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा. 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ पटियाला के प्रबन्धतंत्र से संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण, व श्रम न्यायालय, चंडीगढ़ के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-8-92 को प्राप्त हुआ था।

[संख्या एल-12912/107/86-डी {I (ए)}
सुभाष चन्द शर्मा, डैस्ट्रिक्ट अधिकारी

New Delhi, the 19th August, 1992

S.O. 2388.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Patiala and their workmen, which was received by the Central Government on the 18-8-92.

[No. L-12012/107/86-D.II(A)]
S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER, CENTRAL GOVT., INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 15/87

Brij Mohan Khanna

Vs.

State Bank of Patiala.

For the workman—Shri K. K. Bahal.

For the management—Shri N. K. Zakhmi.

AWARD

Central Government vide Gazette notification No. L-12012/107/86-D.II(A) 2nd March, 1987, issued U/s 10(1)(d) of the I.D. Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of State Bank of Patiala in stopping three annual increments retrospectively that had failed due to Shri Brij Mohan Khanna, Clerk in the Amritsar Branch of the Bank on 8-6-75, 8-6-76 and 8-6-77 and also treatment of the suspension period 14-6-75 to 31-5-78 as leave without pay is just and legal? If not, to what relief is Shri Brij Mohan Khanna entitled?"

2. In the statement of claim it has been alleged that he was appointed as clerk/typist with the respdt. bank in June 1966 and continued to work to the entire satisfaction of the superiors and earned his annual increments which due during the period. It was further alleged that on the basis of false complaint the petitioner was placed under suspension on 15-6-75 and was charge sheeted for which he submitted his reply and he was transferred from Amritsar to Bareta in district Bhatinda on 16-6-1975. It was further alleged that the suspension and transfer is based on bias and malafide intention of the management to punish him. It was further alleged that the disciplinary authority ordered inquiry against him and the inquiry officer was appointed. It was further alleged that the inquiry against him was conducted against rules and provisions of law, and principle of natural justice, and the petitioner was prejudiced in his defence as findings of the inquiry officer was not based on any evidence. It was further alleged that the inquiry officer being subordinate to presenting officer did not submit independent and impartial inquiry report. Inquiry was conducted in illegal manner and was void as the management's witnesses, clearly stated in their evidence that they have been compelled to give evidence. It was further alleged that the punishment awarded to him with regard to stoppage of three increments with cumulative effect and treating the period of suspension up to 31-5-1978 as extra ordinary leave without pay is against service rules and without jurisdiction and thus null and void. It is further alleged that his appeal was illegally dismissed. It is therefore, prayed that the punishment which has been awarded to him with regard to stoppage of three increments with cumulative effect and treating the period of suspension up to 31-5-1978 as extra ordinary leave without pay be set aside and the same may be restored alongwith other benefits.

3. The respondent management contested the claim of the petitioner. The plea was taken that the inquiry was conducted as per the provisions of the Award/Bipartite Settlement and the punishment of stoppage of three annual graded increments with cumulative effect and treating the suspension period from 14-6-75 to 31-5-78 as extra ordinary leave without pay was passed in terms of clause 19:12 (b3) of Bipartite Settlement. On merits it was pleaded that while posted at Amritsar main branch the petitioner committed certain acts of insubordination and disobedience of lawful orders of the superiors. On 5-6-75 he abused the branch manager that he would not allow the branch to run smoothly and instigated the other staff members not to carry out the orders of the branch manager. On 6-6-75 he prevented

the circulation of the office order issued by the Accountant or the branch allocating the duties and shouted that if the order was sent for circulation it would be thrown on the face of the officer. On 7-6-75 he used rude and indecent remarks against the branch manager. On 9-6-75 he shouted against the then Superintendent II of the bank. On 10-6-1975 he organised a meeting in the branch during working hours and slogan against the branch manager was raised which paralysed the branch work. Thus the petitioner committed gross misconduct. It was further pleaded that the petitioner was then suspended and the inquiry was initiated by the disciplinary authority and the workman was given full opportunity to defend his case. Inquiry officer submitted his report. The workman was found guilty by the inquiry officer and the disciplinary authority after going through the report and the reply of the petitioner imposed the said punishment of stoppage of three annual increments with cumulative effect and ordered that the period from 14-6-1975 to 31-5-1978 may be treated as extra ordinary leave without pay with no right to wages and allowance and the petitioner was reinstated w.e.f. 18-9-1978. It is further pleaded that the management has not violated the provisions of law and the workman was given full opportunity to cross-examine the management's witnesses and thus no prejudice was caused to him and the management has not violated any principle of natural justice. It is further pleaded that the action of the management is legal, just and within its jurisdiction as per the rules is bipartite settlement Inquiry report and independent and based on record. The workman was given show cause notice prior to inflicting upon him the above said punishment. It was further pleaded that there was no delay in the appointment of Mohan Singh as inquiry officer. It was further pleaded that the action of the management is legal, just and proper and no principle of natural justice has been violated. The appeal of the workman was rightly decided after careful consideration of the material on the record on the file and after applying of the mind and prayed for the dismissal of the claim of the petitioner.

4. Replication was also filed reiterating the claim made in the claim statement.

5. The management adduced evidence in the first instances. Mohinder Singh D.M. (Agri) produced himself as MW1 and has filed his affidavit Ex. M1. The management also produced MW2 Shri R. D. Sharma officer of State Bank of Patiala who filed his affidavit Ex. M3 in evidence and relied on document Ex. M4 charge sheet dated 14-6-75, Ex. M5 suspension order dated 14-6-1975, Ex. M6 circular dated 17-11-1973, Ex. M7 reply by the workman dated 7-7-75, Ex. M8 letter dated 8-9-1978, Ex. M9 letter dated 21-12-1978 and Ex. M10 the order dated 21-12-1978. The petitioner relied on document Ex. W1 the order, Ex. W2 copy of circular dated 19-11-1976 and has filed his affidavit Ex. W3 in evidence and produced himself as WW1 and also relied on documents Ex. W4 the show cause notice dated 26-6-1978, Ex. W5 reply, Ex. W6 the letter dated 17-6-1975, Ex. W7 memorandum of appeal, Ex. W8 to W11 the affidavits of various persons showing innocence of the petitioner and Ex. W12 order dated 8-9-1978.

6. I have heard both the parties and gone through the record and evidence of the case.

7. Learned counsel appearing on behalf of the petitioner has not contested the case on merits and has prayed for the interference of this Court U/S 11-A of the I.D. Act for the reduction of the punishment imposed on the petitioner on the ground that the sequence of the day to day incident narrated in the charge sheet on the basis of which punishment was imposed is the solitary incident attributed to the petitioner throughout his career since his joining the service since 1966 and further the petitioner has already suffered the agony of long trial in the Court and there is no evidence of the management that even thereafter any such incident has been attributed to the petitioner. I find force in the contention advanced by the learned counsel for the petitioner. The counsel appearing on behalf of the management has also not shown any circumstances or any

evidence that even prior to that incident the conduct of the petitioner has been in the similar nature nor there is any evidence that lately conduct of the petitioner is such grave in nature. There is no dispute on the fact that range of discretion is vested with the management in case of punishment and for the exercise of that discretion the management should certainly take note and consider the past record of service of the employee before inflicting of the punishment. As discussed above the present sequence of incident is the solitary incident throughout the career of the service of the petitioner and certainly the petitioner has also suffered a agony of long trial thereafter. This is also not forgotten that the Act is beneficial piece of legislation enacted in the interest of the employees. In construing the provisions of a welfare legislation, Courts should adopt a beneficent rule of construction. If two constructions are reasonably possible, the construction which furthers the policy and object of the Act and is more beneficial to the employees, has to be preferred. Further the object of the Act is to safeguard the service conditions of the employees. It therefore demands a liberal interpretation.

8. In view of the discussions made in the earlier paras the present case certainly deserve interference U/S 11-A of the I.D. Act, 1947 and this Court therefore, reduce the punishment of the petitioner from stoppage of three increments with cumulative effect to stoppage of one increment with cumulative effect. He is further entitled to receive the amount for the period of his suspension from 14-6-1975 to 31-5-1978 as stoppage of same this would amount to dual punishment, however with no interest. With this modification in the punishment the award is returned to the Ministry.

Chandigarh.

Announced subject to approval by the Government of India, Ministry of Labour on 20-7-92.

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 19 अगस्त, 1992

का.आ. 2389 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, व श्रम न्यायालय सं० 2, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-8-92 को प्राप्त हुआ था।

[संख्या एल-12012/123/85-डी II(ए)]

सुधार चन्द शर्मा, डैस्क अधिकारी

New Delhi, the 19th August, 1992

S.O. 2389.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-Cum-Labour Court No. 2, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 18-8-92.

[No. L-12012/123/85-D.II(A)]

S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, AT BOMBAY
PRESENT:

Shri P. D. Apshankar, Presiding Officer.

Reference No. CGIT-2/13 of 1986

PARTIES

Employers in relation to the Management State Bank of India,

AND

Their Workmen

APPARANCES

For the Employers—Shri A. K. Ramani Assistant Law Officer.

For the Workmen—Shri D. L. Sahare General Secretary Backward Classes Bank Employees' Welfare Association.

INDUSTRY : Banking

STATE : Maharashtra.

Bombay, dated the 6th August, 1992

AWARD PART-II

The Central Government by their Order No. L-12012-(123)/85-D.II(A) dated 12-3-1986 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act:—

"Whether the management of State Bank of India through the Regional Manager, Region IV, State Bank of India, Nagpur, is justified in awarding the punishment of stopping of one increment with cumulative effect, vide order dated 11-10-1984, to Shri S. H. Bhagat? If not, to what relief the workman Shri S. H. Bhagat is entitled?"

2. The case of the workman Shri S. H. Bhagat and the contentions of the Bank Management have already been stated in the Award Part-I, passed on 18-5-1990. Hence they are not again repeated here.

3. The necessary Issues were framed at Ex. 4. The Issue No. 9, viz. Whether the inquiry held against the workman was not held properly, and the rules of natural justice were not followed was tried as a preliminary one, and by the Award Part-I it was held that the inquiry held was held properly, and the rules of natural justice were properly followed.

4. The rest of the Issues are :

- (1) Whether the charge sheet issued against the workman is vague, and bad in law?
- (2) Whether no punishment can be awarded to the workman in view of the finding of the Inquiry Officer that the specific charges againt the workman were not established?
- (3) Whether the punishment of stopping of one increment of the workman is bad in law on the ground that the Disciplinary Authority partly accepted the finding of the Inquiry Officer, and partly rejected it?
- (4) Whether the said punishment is bad in law on the ground that there was no charge of 'low out put' against the workman?
- (5) Whether the Inquiry Officer has not given any finding on the alleged output of the workman with reasons for it, and as such, the Inquiry Report is bad-in-law?
- (6) Whether no proper opportunity of being heard in persons on the point of punishment, was given to the workman by the Disciplinary Authority?
- (7) Whether the inquiry officer was not the person of the proper status, to hold the inquiry against the workman, as contended in para 13 of the written statement of the Bank?

(8) In view of the fact that the 'low out put' is outside the purview of the Awards and settlements between the parties, whether punishment can be awarded to the workman for his alleged output?

(10) Whether the Disciplinary Authority had not applied its mind properly to the facts of the case, and to the circumstances, and evidence in favour of the workman?

(11) Whether Regional Manager IV was not the proper authority, and was not competent to award the punishment to the workman?

(12) Whether the management of State Bank of India through the Regional Manager, Region IV, State Bank of India, Nagpur is justified in awarding the punishment of stopping of one increment with cumulative effect vide order dated 11-10-1984 to Shri S. H. Bhagat?

(13) If not, to what relief the workman Shri S. H. Bhagat is entitled?

(14) What Award?

5. My findings on the said Issues are :

- (1) Yes
- (2) No.
- (3) Yes
- (4) Yes
- (5) Findings should have been recorded.
- (6) Opportunity given.
- (7) Was of the proper Status.
- (8) No.
- (9) No finding recorded
- (10) Was competent
- (11) No.
- (12) As per Award below.
- (13) As per below

REASONS**ISSUE NO. 1**

6. After the Award Part I was passed, the said workman Shri S. H. Bhagat filed his affidavit in support of his case at Ex. 9, and he was cross-examined on behalf of the Bank Management. No oral evidence was led on behalf of the Bank Management. According to the Union of the workman, the charge-sheet issued against him by the Bank Management was vague and bad-in-law. The charge-sheet was issued against the workman by the Branch Manager of the Yeotmal branch on 8-2-1983. That charge sheet (Ex. 11) rank thus:

"You have been discharging your duties in a very unsatisfactory manner. Your output of work is very limited and disposal of work very slow. While working on the Despatch Desk, it was your habit to keep the work pending and the number of letters despatched by you was much below the daily average expected of a senior and experienced clerk like yourself. By adopting a go slow attitude, you have caused disruption in the smooth flow of work and committed acts prejudicial to the Bank's interests."

The said charge-sheet further stated that the above charge amounted to 'Gross Misconduct' in terms of the provisions of the Award. The workman was further asked to submit his reply to this charge-sheet within 7 days. The above said charge-sheet did not state as to during what period his discharge was found below the expected norms. The Bank authority should have stated the norms expected by a workman attached to the Despatch Section, and should have stated the matters disposed of by him during the particular

period. In the absence of those particulars I find that the above said charge-sheet is vague. As per the said charge-sheet the workman was intentionally adopting the go-slow attitude, and as such it amounted to 'Gross Misconduct'. However the authority issuing the charge-sheet did not state under which particular provision and of which Award or Bipartite Settlement, the said intentional go-slow attitude amounted to 'Gross Misconduct'. As such I find the said charge as vague.

Issue No. 1 is therefore found in the affirmative.

ISSUE NOS. 2, 3, 4 and 8 Colly.

7. According to the Union, no punishment can be awarded to the workman in view of the finding of the inquiry officer that the specific charges against the workman were not established. The findings of the inquiry officer dated 23-7-1984 are at Ex. 17. The inquiry officer held that :

- (i) The Charge Sheet does not mention any specific charges against the employee.
- (ii) The output of Shri Bhagat is low as compared to that of other clerks. However it cannot be said that he deliberately adopted a go-slow attitude.
- (iii) The allegation of the workman that he was a victim of Union rivalry and casteism has not been proved.

Thus the enquiry officer found the charge of the deliberate go-slow attitude of the workman is not true. The charge as framed by the Bank Officer against the workman was of intentional attitude of go-slow. It was found not proved by the enquiry officer. As that charge was not true, the alleged output of the workman did not amount to any gross misconduct, and as such no punishment should have been awarded to the workman.

8. However, the Disciplinary Authority issued a show-cause notice dated 10-8-1984 (Ex. 18) to the workman to show cause why the punishment of 'Stoppage of one increment with cumulative effect' should not be imposed upon him. That show cause notice further stated thus :

"I agree with the finding of the Enquiry Officer that your output is low as compared to that of the other clerks. However the enquiry officer's further observation that he has not adopted a go slow attitude deliberately is not acceptable to me, and it has been rejected by me. A clerk of your seniority and experience should be able to show work output comparable to that of other employees. I am convinced that you are capable of showing a higher work output comparable to other employees, and your failure to do so can only be a deliberate go-slow attitude on your part."

Now, the enquiry officer himself after recording the evidence of the witnesses produced before him, had come to the conclusion that even though the output of the workman was low, he had not deliberately adopted a go-slow attitude. Therefore, it was not just and proper on the part of the Disciplinary Authority to take a different view of the matter, and reject the findings of the inquiry officer. Mere low output is not a misconduct under the provisions of any of the Awards or B.P. Settlements. Therefore no punishment could have been and should have been inflicted upon the workman, only on the ground that his output was low. Further, there was no charge of only low output against the workman. Therefore the punishment of stoppage of one increment passed upon the workman only on the basis of his alleged low output, is not just and proper. As per clause 521(4)(v) of the Shastry Award, wilful slowing down in performance of work is a gross misconduct as contemplated under the said provision. No such gross misconduct was committed by the workman. Mere low output is not gross misconduct under the provisions of any of the Awards or Bipartite settlements.

Therefore the issue Nos. 2, 3, 4, and 8 are found as stated above.

ISSUE NO. 5

9. As noted above, the enquiry officer by his report dated 23-7-1984 (Ex. 17) has recorded the findings that the charge-sheet does not mention any specific charge and that the output of the workman is low as compared to that of the other clerks, even though it is not a deliberate and intentional low output. However the enquiry officer did not record any reasons in support of his findings. As per the Clause 521(B) of Shastry Award, the enquiry officer should have mentioned the reasons for arriving at his conclusions, as above. He concluded that the output of the workman was low. However he did not explain in his report on the basis of what particular evidence he had arrived at that conclusion.

Issue No. 5 is therefore found as stated above.

ISSUE NO. 6

10. According to the workman, no proper opportunity of being heard in person on the point of punishment, was given to him by the Disciplinary Authority. However, after the Disciplinary Authority had issued the show-cause notice dated 10-8-1984 (Ex. 18) to the workman to show cause why the said punishment should not be imposed upon him, the workman submitted his detailed reply dated 20-3-1984 (Ex. 19) to the Disciplinary Authority. Therefore even though no personal hearing was given to the workman by the Disciplinary Authority before the punishment was awarded to him, the workman was given the proper opportunity of being heard, and as such it was sufficient in the matter to cover the term "hearing" of the workman.

Issue No. 6 is therefore found as mentioned above.

ISSUE NO. 7

11. The enquiry officer was the officer in the Junior Management Grade/Scale I, and as such according to the Union he was not the person of the proper status to hold the enquiry against the workman, as he i.e. enquiry officer was of the rank below the rank of the Disciplinary Authority. In this connection reliance was placed on behalf of the union upon clause 186(j) of the Desai Award, which stated that;

"The officer holding the enquiry should be above the rank of the officer who issue the charge sheet".

However, on a careful perusal it will be seen that this was only an argument advanced by the union before the Judge, and it was not the finding recorded by the Judges in that award. According to the Bank Management, there is no provision in any of the Awards or Bipartite settlements stating that the enquiry officer should be a person of a particular status. I accept that contention of the Bank Management and find the Issue No. 1 that the enquiry officer was a person of the proper status.

Issue No. 7 is found accordingly.

ISSUE No. 7

12. According to the Union, the Disciplinary Authority did not apply its mind properly to the facts of the case and to the circumstances and to the evidence in favour of the workman. However no finding is recorded on this Issue in view of the fact that the enquiry officer himself did not record any reasons in support of his findings, and in view of the fact that the low output is outside the purview of the different Awards and Bipartite Settlements, and as the low output by itself does not constitute a misconduct on the part of the employee.

ISSUE No. 11

13. The Charge-sheet in the present case was issued by the Branch Manager of the Yeotmal Branch. Thereafter the enquiry was started as per the letter of the Regional Manager (III), who was the Disciplinary Authority. However the punishment of stoppage of one increment was passed by the Regional Manager, Region-4, the Disciplinary Authority. Therefore, according to the Union, the Regional Manager IV was

not the proper authority and was not competent to award the punishment to the workman. However, according to the Bank Management, in 1982 the Yeotmal Branch was placed under the control of the Regional Manager, Region 4, from Region No. 3. I accept this contention of the Bank Management, and find that the Regional Manager IV was then the competent authority to award the necessary punishment to the workman. (Even though that punishment was not just and proper).

Issue No. 11 is found accordingly.

14. In the result, the action of the State Bank of India, Nagpur, in awarding the punishment of stoppage of one increment with cumulative effect upon the workman, Shri S. H. Bhagat by their order dated 11-10-1984 is not just and proper.

Issue No. 12 is found in the negative.

15. As such the workman is entitled to all the service benefits which were withheld because of the stoppage of his one increment, as above.

Issue No. 13 is found accordingly.

16. Even then the said workman should try his best to improve the speed of his work and should give the maximum output expected from the employee of his status.

17. The following Award is, therefore, passed:

AWARD

The action of the management of State Bank of India, Nagpur, in awarding the punishment of stopping of one increment with cumulative effect vide order dated 11-10-1984 to Shri S. H. Bhagat, is not just and proper.

The Bank Management is hereby directed to pay the arrears of all the amounts of the service benefits to the said workman which came to be withheld because the stopping of his one increment by the order dated 11-10-1984, within three months.

The parties to bear their own costs of this Reference.

SHRI P. D. AFSHANKAR, Presiding Officer

नई विल्ली, 20 अगस्त, 1992

का. आ. 2390:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबन्धतंत्र ने; संचालनियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकारण, उड़ोसा भूबनेश्वर में पंक्षपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-8-92 को प्राप्त हुआ था।

[संख्या एन-12012/177/90-प्राइवार (वी-III)]

मुख्य अन्दर शर्मा, डॉ अधिकारी

New Delhi, the 20th August, 1992

S.O. 2390.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Orissa, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India, and their workmen, which was received by the Central Government on the 19-8-1992.

[No. L-12012/177/90-IR (B-UI)]
S. C. SHARMA, Desk Officer.

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR
PRESENT :

Shri R. K. Dash, LL.B., Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 40 OF 1990
(CENTRAL)

Dated, Bhubaneswar, the 11th August, 1992

BETWEEN :

The Management of State Bank of India, Regional Office, 27, Forest Park, Bhubaneswar.

..First Party-management.

AND

Their workman Shri Laxmidhar Sahoo, Village—Tanksapani, P.O. Gada Srirampur, Via, Balakati, Distt. Puri.

..Second Party-Workman.

APPEARANCES :

Shri N. K. Patnaik, Advocate—For the first party—Management.

Shri L. D. Sahoo, For the workman—himself.

AWARD

The Government of India in the Ministry of Labour, in exercise of powers conferred upon them by clause (d) of sub-section (1) and subsection (2-A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), (hereinafter referred to as the "Act") have referred the following dispute for adjudication by this Tribunal vide their Order dated 9-11-1990:—

"Whether the action of the management of State Bank of India, Regional Office, Bhubaneswar in terminating Shri Laxmidhar Sahoo, ex-Canteen boy from his service w.e.f. 4-12-1987 is justified? If not, to what relief the workman is entitled to?"

2. The grievance of the workman is that he was appointed as a Canteen boy by the management of State Bank of India, Regional Office, Bhubaneswar from November, 1984 till December, 1987. His initial wages per month was Rs. 150/- which was subsequently enhanced to Rs. 175/- Without any reason and rhyme the management on 4-12-87 refused him employment. So, he raised a dispute which was admitted to conciliation before the Assistant Labour Commissioner (Central), Bhubaneswar and the same having failed the present reference was made by the Central Government for adjudication.

3. The case of the management in its written statement dated 18-1-1991 is that Local Implementation Committee comprising members of the Supervisory and Award staff had opened a canteen for their own interest but subsequently as per the decision of the authority the said canteen was taken-over by the management of the Bank whereafter an interview was held to give employment to some persons to run the canteen. The present workman was given due notice to appear the interview but he did not.

4. In view of the pleadings of the parties, the following issues are settled:—

ISSUES

(1) Whether the second Party-workman Shri Laxmidhar Sahoo was a workman under the Management of State Bank of India, Regional Office, Bhubaneswar?

(2) Whether the action of the management of State Bank of India, Regional Office, Bhubaneswar in terminating Shri Laxmidhar Sahoo, Ex-Canteen boy from his service w.e.f. 4-12-1987 is justified?

(3) To what relief, if any, the second Party—workman is entitled?"

5. For better appreciation of the case and to arrive at a right conclusion all the issues are taken-up simultaneously.

In course of hearing the management examined two witnesses whereas the workman examined him alone. The work or the issue is whether there existed employer and employee relationship between the management of State Bank of India, Regional Office, Bhubaneswar and the workman. If this is answered in favour of the workman then the question would arise whether refusal of employment since 4-12-1987 is legal and justifiable.

6. The stand taken by the first party-management is that the old canteen which was being run and managed by the Local Implementation Committee was subsequently taken-over by the bank. Witness No. 1 for the management would say that the canteen run by the aforesaid committee was taken-over by the first party-management on the basis of a decision taken by the authority of the bank that where the strength of employees exceeds 150 in canteen would be taken-over and managed by the Bank itself. The second witness for the management though has not stated about the taking-over of the canteen by the bank as deposed to by witness No. 1, he however, speaks that the canteen which was previously run by the Local Implementation Committee is now being managed directly under the supervision of the Bank. Now the question arises whether the old canteen was financed and run by the Local Implementation Committee or it was a part and parcel of the Bank and only its management was entrusted to the Local Implementation Committee. Except the ocular testimony of the management witness No. 1, there is no corroborating evidence either oral or documentary to show that the canteen had been taken-over by the management of State Bank of India, Regional Office, Bhubaneswar. If actually the canteen belonged to the Local Implementation Committee and by the decision of the authority it was taken-over by the Bank by means of transfer there must have been an agreement regarding rights and liabilities of both the transferor and the transferee. No such document is forthcoming from the possession of the management. In a case of transfer of an undertaking a workman who has been in continuous service of not less than one year is entitled to a notice and compensation as provided u/s. 25-FF of the Act as if he had been retrenched. But no evidence worth the name has been adduced by the management to show that the ownership of the canteen remained exclusively with the Local Implementation Committee and subsequently it had been taken-over by way of transfer. On the other hand, the evidence and circumstances would go to show that the ownership of the canteen in question is always with the Bank and its management was only entrusted to the Local Implementation Committee. The workman was although given appointment as a temporary canteen boy by the Secretary of the Local Implementation Committee but it was in the pad of the State Bank of India which bears letter number and date of the Bank. Furthermore, as deposed to by the management witness No. 2, the canteen was functioning in a room and open space provided by the bank and the employees of the bank are provided with snacks and tea in a subsidised rate. He also denies his knowledge if the bank provided funds to run the canteen. When the management pleads that the canteen originally belonged to the Local Implementation Committee and it had no control over it, in that case it ought to have led evidence as to who provided funds to open the canteen. On the other hand, it is the consistent case of the workman that the State Bank of India, Regional Office, Bhubaneswar being the owner of the canteen had appointed him as a canteen boy in the year 1984. He would further say that the total strength of employees of the canteen was 7 and of them four are continuing in service.

7. From the aforesaid evidence my irresistible conclusion would be that the canteen is an integral part of the bank and not of the Local Implementation Committee. Only its management was entrusted to the Local Implementation Committee as because it was meant to provide snacks and tea to the employees in a subsidised rate. There having no evidence that the Local Implementation Committee had provided funds to run the canteen the ocular testimony of MW-1 that the canteen exclusively belonged to the Local Implementation Committee and the same was subsequently

taken-over by the management can not be accepted to be true, particularly when no documentary evidence is forthcoming regarding transfer.

8. Admittedly, the present workman having worked as a canteen boy for about three years has been removed from service and in his place others have been given employment through interview. In all fairness the management should have allowed the workman to continue in service when there is no allegation of misconduct against him. The action of the management as aforesaid by denying employment to the workman amounts to unfair labour practice.

9. In view of my discussions made above, I answer the reference in favour of the workman. I hold that he was a canteen-boy under the management of the State Bank of India, Regional Office, Bhubaneswar and for no fault of his own he was refused employment since 4-12-1987. So, he be reinstated in service as a canteen-boy and be paid all back wages.

The reference is answered accordingly. Dictated and corrected by me.

Sd./-
Illegible
Presiding Officer, Industrial Tribunal.
Dated, 11-08-1992.

Sd./-
Illegible
Presiding Officer, Industrial Tribunal.
Dated, 11-08-1992.

नई दिल्ली, 20 अगस्त, 1992

का.आ. 2391:—ओद्योगिक विवाद प्रतिनिधित्व, 1947 (1947 का 14) की धारा 17 के अनुचरण में, न्दीय सरकार, मैसर्स हॉस्टर्ट कॉन्फिल्ड्स लि. को खुलिया कोनियरों के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों की बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकारण, (सं 1) धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-8-92 को प्राप्त हुआ था।

[संख्या एन-20012/155/88-आईप्रार. (कोल-I]
एम.सी. शर्मा, ऐस्क अधिकारी

New Delhi, the 20th August, 1992

S.O. 2391.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1) Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Khudia Colliery of M/s Eastern Coalfields Ltd. and their workmen, which was received by the Central Government on the 14-8-92.

[No. L-20012(155)/88-IR (Coal-I)]

S. C. SHARMA, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under Section 10(1)
(d) of the Industrial Disputes Act, 1947.

Reference No. 55 of 1989

PARTIES: Employers in relation to the management of Khudia Colliery of M/s. Eastern Coalfields Ltd.,

AND

Their Workmen

PRESENT: Shri S. K. Mitra,
Presiding Officer.

APPEARANCES :

For the Employers : Shri R. S. Murthy, Advocate.

For the Workmen : Shri P. Pathak, Advocate.

State : Bihar. Industry : Coal.

Dated, the 7th August, 1992

AWARD

By Order No. L-20012(155)88-I.R. (Coal-J), dated, the 12th May, 1989, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Khudia Colliery of M/s. Eastern Coal Fields Ltd. in not giving promotion to S/Shri Raj Kumar Barai and Noni Gopal Sarkar to the post of Grade 'A', Dozer Operator from 15-7-85 is justified? If not, to what relief are the concerned workmen entitled?".

2. The case of the management of Khudia Colliery of M/s. Eastern Coal Fields Ltd., as disclosed in the written statement-cum-rejoinder, is as follows:

The present reference is bad in law and not maintainable. The concerned workmen, Raj Kumar Barai and Noni Gopal Sarkar, are placed in Excavation Grade 'B' as Dozer Operator. They have been correctly placed in that grade and they are not entitled to Excavation Grade 'A'. It transpired at the time of conciliation proceeding before the Asstt. Labour Commissioner (C), Dhanbad, that the union sought to compare the cases of these two workmen with another workman, namely, Chandra Bhan Singh without any justification. There can be no comparison between Chandra Bhan Singh and the two concerned workmen as the fact of the cases of these two sets of workers are entirely different. Chandra Bhan Singh joined as HEMM Operator with effect from 24-6-80. He was placed in Excavation Grade 'B' as HEMM Operator with effect from 2-2-82. He had long service experience of 15 years in connection with operation of heavy earth moving machinery of various types prior to his appointment under the management. Even after his appointment he had worked on various types of heavy earth moving machinery, such as, cranes, dozers, motor graders, dumpers and shovels/excavators. There was shortage of Operators for operating cranes, motor graders, dumpers and shovels and his services had been utilised in connection with

the operation of such equipments. He had acquired versatility and proficiency in operating various types of HEMM. His performance was of a very high order and his skill and proficiency were extra-ordinary. In consideration of the above facts and also merits of the case and the need for his services for operation of various types of heavy earth moving machinery as stated above, the management considered case and placed him in Excavation Grade 'A' in July, 1985. The concerned workmen have less experience, proficiency and skill than Chandra Bhan Singh. These workmen have no right or justification to claim the same benefit as Chandra Bhan Singh as there can be no comparison between Chandra Bhan Singh and these two workmen. For the type of work on which the concerned workmen have been engaged and dozers that they have been operating they have been correctly placed in Excavation Grade 'B'. They have no right to claim Excavation Grade 'A'. Promotion is a sole function of the management and no workman can claim it as a matter of right. In the circumstances, the management has submitted that its action be held to be justified.

3. The case of the concerned workmen as disclosed in the written statement submitted on their behalf by the sponsoring union, Rashtriya Colliery Mazdoor Sangh, briefly stated, is as follows :

The concerned workmen, Raj Kumar Barai and Noni Gopal Sarkar, have been working as Grade 'B' Dozer Operators with effect from 1-5-81 and 8-10-80 respectively in Khudia colliery of M/s. E.C. Ltd. to the satisfaction of the superiors. Chandra Bhan Singh was appointed as Grade 'D' Dozer Operator sometime in 1980. He was allowed by the management of the colliery to work in higher grade 'C' within a year of his date of appointment and was paid difference of wages between Grade 'D' and Grade 'C'. Chandra Bhan Singh was promoted to the post of Grade 'B' Dozer Operator sometime in 1982 and again by letter dated 13/15-7-1985 he was promoted to the post of Grade 'A' Senior Dozer Operator and within a period of six years he got three promotion. It is evident that the management indulged in favouritism, discrimination and violation of promotion rules and superseded the concerned workmen in the matter of promotion by promoting Chandra Bhan Singh to the post of Senior Dozer Operator in Grade 'A'. In normal circumstances as per rule the concerned workmen are entitled for promotion to the post of Grade 'A' Dozer Operator long back. They have been denied such promotion by the management. Besides, Noni Gopal Sarkar belongs to Schedule Caste community and as per Government rules he is entitled to relaxation of conditions of promotion. The concerned workmen and their union represented to the management to consider their cases for promotion to the post of Dozer Operator Grade 'A', but the management paid no heed to it. The union raised an industrial dispute and the conciliation proceeding ended in failure because the management did not come to any settlement. Thereafter the present industrial dispute has been referred to this Tribunal for adjudication by the appropriate Government. It is beyond doubt that the management has denied promotion to the concerned workmen to which they are entitled as per rules and in the process they have been superseded by their

junior colleague Chandra Bhan Singh. In the circumstances, the union has prayed that the concerned workmen be promoted to the post of Dozer Operator Grade 'A' with effect from 15-7-85 with all other benefits.

4. In rejoinder to the written statement of the union, the management has admitted that the concerned workmen have been working as Grade 'B' Dozer Operators from 1-5-81 and 8-10-80 respectively. The management has denied that it has indulged in favouritism, discrimination and violations of promotion rules by promoting Chandra Bhan Singh to the post of Senior Dozer Operator Grade 'A' and in the process superseded the concerned workmen. The management has asserted that it is perfectly justified in not promoting the concerned workmen to the post of Senior Dozer Operator Grade 'A'.

5. In rejoinder to the written statement of the management, the union has stated that Chandra Bhan Singh was appointed as Dozer Operator in Grade 'B' on 2-2-82 and he was promoted to Dozer Operator Grade 'A' superseding the claim of the concerned workmen. The case of promotion of Chandra Bhan Singh is naked case of favouritism and nepotism which resulted dissatisfaction and discontentment on the part of other employees who are adversely affected by such illegal and unjustified action on the part of the management. The employers cannot go by promotion rules and procedures and promote any body as they like without considering merits of different candidates. Every employee/ workman has got right to be considered for promotion according to rules and procedure of promotion by the D.P.C. constituted for the purpose.

6. In order to sustain its action, the management examined Sri T. N. Gupta posted to Khudia Colliery as Agent from February, 1982 to February, 1991 as M.W. 1 and Sri Chandra Bhan Singh as MW-2 and laid in evidence some documents which have been marked Exts. M-1 to M-5.

On the other hand, the union has examined only Sri Noni Gopal Sarkar as W.W. 1 and laid in evidence some items of documents which have been marked Exts. W-1 to W-4.

7. Admittedly, Noni Gopal Sarkar, one of the concerned workmen, joined the service of Khudia Colliery of M/s. Eastern Coal Fields Ltd. as Dozer Operator Grade 'B' on 8-10-80. It appears that earlier he was employed in the office of Director of Reclamation Dandakaranya Project as Junior Tractor Driver and by order dated 3-10-62 he was promoted to the post of Tractor Driver (Ext. M-5). The certificate of his previous employer indicates that he served in Rehabilitation Reclamation Organisation for about 16 years and had experience in operating heavy crawler tractors of different make, motor graders etc. and was associated with maintenance and repair of these machines (Ext. M-4). He was directly appointed as Dozer Operator Grade 'B' after interview. His letter of appointment dated 27-5-80 establishes this fact. The other concerned workman Raj Kumar Barai has been working as Dozer Operator Grade 'B' from 1-5-81. It is not known as to whether he was directly recruited in that post. As a matter of fact, the union has not pursued his case in the present reference.

8. The concerned workman, Noni Gopal Sarkar, has been claiming promotion to the post of Dozer Operator Grade 'A' from 15-7-85. His case if considered simply from the stand point of his eligibility for promotion cannot make any headway. He is claiming promotion as Senior Dozer Operator in Group 'A'/Grade 'A'. Implementation Instructions used by J.B.C.C.I. with regard to grouping, job description etc. of Excavation Workers lay down the eligible criteria for promotion to Group 'A' of Excavation Workers. The relevant portion of the Implementation Instruction reads as follows :

"Senior Dozer Operator—A highly skilled workman possessing not less than 8 years experience in the operation and handling of Crawler or Wheel type dozers of not less than 385 HB/410 HP class of which he must have 3 years minimum experience in the next below grade i.e. Group-B. He should have general knowledge of the mechanism of the equipment and should undertake minor running repairs and maintenance. He should hold valid licence for tractor driving."

The concerned workman was not having the experience of 8 years in the operation and handling crawler or wheel type dozers or not less than 385 HB or 410 HP class of which he must have 3 years experience in the next below grade i.e. in Group 'B'. This being the position, he cannot claim promotion to the post of Senior Dozer Operator in Group 'A' on the basis of his experience.

But his case for promotion should be considered in comparison with the case of Chandra Bhan Singh. It appears that Chandra Bhan Singh joined the service of M/s. E.C. Ltd. as Operator H.E.M.M in Excavation Grade 'D' with effect from 24-6-80 by letter of appointment dated 21-2-80 (Ext. W-4). It appears that this workman also served in Indian Army for 15 years and has got experience in operation of different type of crawler, tractor, crane, dumper, motor grader, towed scraper and motorised scraper. The certificate issued by the Army Authority establishes this fact (Ext. M-3). He has asserted in his evidence that while at Army he used to operate dozer having the capacity of 400 to 450 H.P. or less. He has not been cross-examined on this point. His evidence discloses that when he joined Khudia Colliery in June 1980 there was no motor grader operator in that colliery. He has read upto Class VIII Standard while the concerned workman has read upto Class IV Standard. Chandra Bhan Singh has further stated that when he joined the service of M/s. E.C. Ltd. as Dozer Operator in Grade 'D' there was no vacancy in the higher post of the same stream. He has been supported with regard to this fact by MW-1 T. N. Gupta, who was the Agent of the colliery from February, 1982 to February, 1991. Shri Gupta has stated that since no vacancy existed at that time Chandra Bhan Gupta was appointed in Grade 'D'. Subsequently Chandra Bhan Singh was promoted to Dozer Operator Grade 'E' in 1982, and by Office Order dated 13/15-7-85 he was promoted as Senior Dozer Operator in Excavation Grade 'A' with immediate effect (Ext. W-2). His promotion to the post of Senior Dozer Operator Grade 'A' has given rise to the present industrial dispute as the union contends that this was a case of nepotism, favouritism and discrimination. It is also a case of contrary to promotion policy.

8. The concerned workman has stated in his evidence that in course of performance of duty he is not required to operate motor grader, crane and dumper and as a Dozer Operator Grade 'B' he is also not required to repair dozer. According to him, a separate group of workers known as fitters repair and maintain the dozers. He has asserted that as Dozer Operator Grade 'B' Chandra Bhan Singh used to perform the same nature of duty as he and other workman used to perform and that he is senior to Chandra Bhan Singh as Dozer Operator Grade 'B'. MW-1 T. N. Gupta has also admitted that both Chandra Bhan Singh and the concerned workman were operating the same Dozer or same type of dozer all along during his period and that the dozers they were operating were of the capacity of 350 H.P. His evidence further indicates that the management of the colliery did not have any dozer of 385 H.P. or more. Shri Gupta has further stated that Chandra Bhan Singh used to operate motor grader and other type of machines, such as, crane and dumpers. The concerned workman did never operate any motor grader or crane and besides operating dozers, motor-graders, cranes Chandra Bhan Singh used to do running repair of dozers. In his opinion Chandra Bhan Singh was more proficient and skilful than the concerned workman and that Chandra Bhan Singh's devotion to and performance of duties were of the highest order. The concerned workman has disputed the fact in his evidence that Chandra Bhan Singh used to operate any machine other than dozer. But in the context of evidence of Shri Gupta I am not prepared to rely on the evidence of the concerned workman in this respect. As a matter of fact, Shri Gupta raised a note-sheet dated 4-3-85 (Ext. M-2) which reads as follows :

"Subject.—Recommendation for additional increment in the existing grade for external performance.

Shri Chandra Bhan Singh, Dozer operator, has been trained and working in most of the heavy earth moving machineries under defence establishment for over fifteen years before joining in E.C.L. at Nirsha Area on 24th June, 1980 as HEMM operator. Shri Singh is an Excavation Grade 'B' operator since 2nd February, 1982. The service of Sri Singh has also been frequently utilised in various machines under

this project, namely crane, dozer, motor grader, dumper and shovel, for which we have got shortage of operators. Presently, he is working both in motor grader and dozer.

His service was utilised without any extra remuneration in more than one machine. His performance, loyalty and sincerity are of the highest order and as such recommended for promotion to Excavation Grade 'A' but the proposal has been turned down, since there is no provision of Excavation Grade 'A' for dozer operator.

It is felt that no consideration has been given to the long service of 15 years, while he was appointed as HEMM operator, as he was given the initial starting basic for that grade.

It is also felt that since we are utilising more than two jobs of different grades from him and this man is versatile in mostly all the HEMMs, it is recommended that atleast three to four increments may kindly be granted to him, since he could not be promoted in higher grade as a mark of appreciation of his sincerity, loyalty as well as operating more than one machine.

General Manager, Nirsha Area may kindly see, consider and grant three to four additional increments in the existing grade to reduce the financial losses, which he has been suffering till date.

Sd/-

T. N. Gupta,
Agent, Khudia Colliery."
4-3-1985.

The Personnel Manager of the Area recommended his promotion to the post of Senior Dozer Operator Excavation Grade 'A' (Ext. M-2/1) and this was approved of by the General Manager of the Area (Ext. M-2/2). Thereafter the Office Order was issued on 13th/15th July, 1985 promoting Chandra Bhan Singh to the post of Senior Dozer Operator in Excavation Grade 'A' (Ext. W-2). It appears from the note-sheet that Chandra Bhan Singh was promoted to the post of Senior Dozer Operator in Excavation Grade 'A' by the management after fair assessment of his service in operation of various types of machines, namely, crane, dumper, motor grader, dozer and shovel, his performance, loyalty and sincerity. It does not appear that the management promoted him to that post actuated by nepotism or favouritism. Although the concerned workman was senior to Chandra Bhan Singh as Dozer Operator Grade 'B', there is no hard evidence to indicate that the management has resorted to discrimination by promoting Chandra Bhan Singh to the post of Senior Dozer Operator in Excavation Grade 'A'. Chandra Bhan Singh has been promoted to that post in consideration of his service in operation of different types of machines, his performance, sincerity and loyalty. The management by promoting him to that post may reasonably expect better service from him in future. At the time when Chandra Bhan Singh was promoted to the post of Senior Dozer Operator, the concerned workman was not eligible for promotion to the post of Senior Dozer Operator, as I have pointed out before by re-producing the relevant portion of job descriptions of Senior Dozer Operator issued by J.B.C.C.I.

It has been contended that by promoting Chandra Bhan Singh to the post of Senior Dozer Operator the management has violated promotion policy. Unfortunately the union has not spared any pain to produce the cadre scheme and promotion scheme of Excavation Workers. On the other hand, Shri Gupta has asserted in his testimony that in Excavation Grade promotions are determined sometimes on the basis of seniority-cum-merit i.e. proficiency, performance and efficiency. The management took into consideration the merit of the case of Chandra Bhan Singh in promoting him to the post of Senior Dozer Operator Grade 'A'. There is no evidence on record to indicate that the management has violated the promotion rules while promoting Chandra Bhan Singh to the post of Senior Dozer Operator.

9. The union has claimed that since the concerned workman belongs to Schedule Caste community he is entitled to get relaxation of condition for promotion to the post of Senior Dozer Operator. But no guideline issued by the Government or the Company has been produced before me. As a matter of fact, this aspect of the case was given a go-by by the union at the time of hearing.

10. Nevertheless, I desire to place on record that the concerned workman joined the service of M/s. E.C. Ltd. on 8th October, 1980 as Dozer Operator Grade 'B'. Earlier he was working in the office of the Director of Reclamation Dandakaranya Project and worked there for 16 years. During the course of his employment there he was operating heavy crawler tractors and different made motor graders etc. He has completed 8 years of service as Dozer Operator in Grade 'B'. The Implementation Instruction of J.B.C.C.I. indicates that the worker seeking promotion as Senior Dozer Operator Grade 'A' shall have experience in the operation and handling of crawler or wheel type dozers of not less than 385 H.B./410 HP class of which he must have 3 years minimum experience in the next below grade i.e. Group-B. Shri Gupta stated that the colliery was not having any dozer of 300 HP or more. But this cannot be any ground for not promoting any workman working in Excavation Grade 'B' to the post of Senior Dozer Operator in Excavation Grade 'A' having 8 years experience and other qualification. The concerned workman already completed 8 years of service on 8th October, 1988. That being so, the management is directed to consider his case for promotion to the higher post. The case of Raj Kumar Barai has not been pursued by the union.

11. With the observation with respect to the concerned workman, Noni Gopal Sarkar, as aforesaid, I pass the following award--

The action of the management of Khudia Colliery of M/s. Eastern Coalfields Ltd. in promoting Chandra Bhan Singh to the pos. of Senior Dozer Operator in Excavation Grade 'A' is justified. Nevertheless, the management is directed to consider the case of promotion of the concerned workman, Noni Gopal Sarkar, to the post of Senior Dozer Operator in Excavation Grade 'A' upon completion of 8 years service as Dozer Operator in Excavation Grade 'B'.

In the circumstances of the case, I award no cost.

This is my award.

S. K. MITRA, Presiding Officer

नई दिल्ली, 20 अगस्त, 1992

का.धा. 2392 :—आंशोगिक विवाद श्रद्धिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मै. भारत कोकिंग कोल लि. का सिंगुप्रा क्षेत्र स.-5 को लोवाडा कोलिपरी के प्रबन्धांत के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट आंशोगिक विवाद में केन्द्रीय सरकार आंशोगिक अधिकरण, (स. 1) धनबाद के पंचायत को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-8-92 को प्राप्त हुआ था।

[संख्या एल-20012(133)/89-आई आर (कोल-1)]

एस.सी. शर्मा, डैस्क अधिकारी

New Delhi, the 20th August, 1992

S.O. 2392.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1) Dhanbad is shown in the Annexure in the industrial dispute between the employers in relation to the management of Loyabad Colliery of Sijua Area No. V of M/s. B.C.C. Ltd. and their workmen, which was received by the Central Government on 14-8-1992.

[No. L-20012(133)/89-IR (Coal-1)]

S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under sec. 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 13 of 1989

PARTIES :

Employers in relation to the management of Loyabad Colliery of Sijua Area No. V of M/s. B.C.C. Ltd.

Vs.

Their Workmen

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers:—Shri B. Joshi, Advocate.

For the Workmen:—Shri Lalit Burman, Vice-President, United Coal Workers' Union.

STATE:—Bihar.

INDUSTRY:—Coal.

Dated, the 6th August, 1992

AWARD

By Order No. L-20012/133/89-I.R. (Coal-I), dated, the 3rd November, 1989, the Central Govt. in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Loyabad Colliery of Sijua Area No. V of M/s. Bharat Coking Coal Ltd. in dismissing Shri Rajendra Prasad, Cap Lamp Mazdoor of Loyabad Colliery w.e.f. 8-2-88 is justified? If not, to what relief is the workman entitled to?"

2. The case of the management of Loyabad Colliery of Sijua Area No. V of M/s. B.C.C. Ltd., as disclosed in the written statement-cum-rejoinder, details apart, is as follows:

The present reference is not legally maintainable. The concerned workman was dismissed from service on 8-2-88 and died on 5-9-88 in a road accident. The present reference made more than one year after the death of the concerned workman is obviously illegal and void as no industrial dispute existed or apprehended at the time of making the reference. Rajendra Prasad, deceased since accepted his guilt and his dismissal from service. He did not authorise any union to raise any industrial dispute. He was not a member of any trade union. The present reference made at the behest of the sponsoring union, on behalf of a dead person cannot be adjudicated due to lack of jurisdiction. The concerned workman

was designated as Cap Lamp Mazdoor but he was performing the duties of Lamp issue clerk at the relevant time in 1985. His duty was to maintain lamp issue and return register. Every cap lamp bears a number. The issue clerk is required to enter the number of the cap lamp against the name of the workman to whom the cap lamp is issued. The workman takes the cap lamp inside the mine and brings it back at the time of his return from the mine. He returns the lamp to the lamp issue clerk, who enters the number of the lamp on the issue-return register. His duty is to make daily check of the issue and return of lamps and in case of any loss, he is required to report about the loss to his cap lamp room-in-charge or the A.C.M. incharge of the mine. It was detected that 105 cap lamps were missing from the cap lamp cabin where the concerned workman was working as lamp issue clerk due to non-performance or improper performance of his duty or his complicity in the conspiracy of stealing away the cap lamps. A charge-sheet dated 20-10-86 was issued to the concerned workman and he was suspended during the pendency of the enquiry. The concerned workman denied the allegation levelled against him. Thereafter a departmental enquiry was held by the management in accordance with the principles of natural justice. The concerned workman was found guilty of the misconduct levelled against him. He was dismissed from service by letter dated 8-2-88 issued under the signature of Dy. Chief Mining Engineer of Loyabad Colliery who was the Agent under the Mines Act, 1952.

3. The case of the sponsoring union, United Coal Workers' Union, raising the present industrial dispute, is as follows:

The concerned workman was employed as Cap Lamp Mazdoor in No. 6 Pit Lamp Cabin of Loyabad Colliery of M/s. B.C.C. Ltd. The management by letter dated 2-8-85 put him temporarily as a Lamp Issue Clerk with effect from 5-8-85. As a Lamp Issue Clerk it was the duty of the workman to issue cap lamps to the underground workers and to maintain the Cap Lamp Issue Register. He was not responsible for maintenance and safe custody of lamps. The management issued a charge-sheet dated 20-10-86 against him alleging that 105 cap lamps were found missing and that he was guilty of various acts of misconducts under the Standing Orders and suspended him. He submitted his reply denying all the charges. The management held departmental enquiry which was neither fair nor proper. As a matter of fact the basic premises of allegation that 105 cap lamps were missing from the Cap Lamp Cabin were not sustainable. Anyway, domestic enquiry was not held fairly and properly and on the basis of the report of the Enquiry Officer finding the concerned workman guilty of misconduct, the management dismissed him from service which is totally wrong and unjustified. The concerned workman is entitled to get relief of re-instatement with full back wages.

4. In rejoinder to the written statement of the sponsoring union, the management has reiterated the facts as contained in its written statement.

5. In rejoinder to the written statement of the management, the sponsoring union has stated that the industrial dispute arose on 8-2-88 when the concerned workman was dismissed from service and the workman died in a road accident during the pendency of the dispute and as such the reference is lawful and maintainable. The union has reiterated the other statements of facts as made in its written statement.

6. The propriety and fairness of the domestic enquiry was considered as preliminary issue. In the course of hearing on preliminary issue, the management examined MW-1 Nand Kishore Jha, who held the departmental enquiry, and laid in evidence a number of documents which have been marked Exts M.1 to M.8.

The sponsoring union did not adduce any documentary evidence. Upon consideration of evidence on record it was held that the domestic enquiry was held Issue Clerk with effect from 5-8-1985.

7. Admittedly, Rajendra Prasad was employed as Cap Lamp Mazdoor in No. 6 Pit Lamp Cabin of Loyabadi Colliery of M/s. B.C.C. Ltd. The management of colliery temporarily placed his service as Cap Lamp Issue Clerk with effect from 5-8-85.

It appears that consequent upon 105 cap lamps found missing, the management issued charge-sheet dated 20-10-86 against the concerned workman for commission of various acts of misconducts under Clause 17 (i)(a)—theft, fraud, or dishonesty in connection with the employer's business or property, Clause 17(i)(f) habitual neglect of work and 17 (i) (i) causing wilful damage to work in progress or to property of the employer under Model Standing Orders for industrial establishments in coal mines. The concerned workman submitted his reply to the charge-sheet. But that being found unsatisfactory, the management held departmental enquiry into the charges of misconduct allegedly committed by the concerned workman. The concerned workman participated in the departmental enquiry and the Enquiry Officer upon consideration of evidence on record, found the concerned workman guilty of the charges of misconduct on each count. The concerned workman was dismissed from service with effect from 8-2-88. It remains undisputed that he died on 5-9-88, in a road accident. The present reference for adjudication was made by the appropriate Government on 3-11-1989.

In the context of these facts and circumstances Shri B. Joshi, learned Advocate for the management, has contended that the present industrial is not maintainable as the concerned workman was dead when the present reference was made and there was no industrial dispute existed or apprehended at the time of making the reference.

Shri Laiit Burman, authorised representative of the sponsoring union, has endeavoured to counter this contention by submitted that the present industrial dispute was raised on 8-2-88 when the concerned workman was dismissed from service and the concerned workman died during the pendency of the said dispute. Hence, according to him, the present reference is lawful and maintainable.

8. Indeed, the concerned workman was dismissed from service on 8-2-88 and he died on 5-9-88 in a road accident. The cause of action of the present industrial dispute arose on 8-2-88. But there is no evidence at all that the sponsoring union or the concerned workman raised the industrial dispute on or immediately after 8-2-88. I have already stated that the appropriate Government made the present reference for adjudication on 3-11-89 when the concerned workman was already dead. There is no evidence at all to show whether the sponsoring union raised the industrial dispute before the death of the concerned workman. It appears that the Conciliation Officer submitted its report of failure of conciliation on 30-3-89 when also the concerned workman was dead. Section 10 (8) of the Industrial Disputes Act envisages that no proceedings pending before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour Court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the appropriate Government. But no industrial dispute was pending before this Tribunal when the concerned workman was dead. He died long before the present industrial dispute was referred to this Tribunal for adjudication by this Tribunal. There is no provision in the Industrial Disputes Act for entertainment or continuance of the proceeding relating to an industrial dispute concerning any workman who was dead before the reference for adjudication was made. Since the concerned workman was dead when the present reference for adjudication was made by the appropriate Government, I hold that the present reference for adjudication is not only maintainable but also unjustified.

9. Accordingly, I held that the present reference relating to an industrial dispute over the dismissal of the concerned workman from service is not maintainable.

This is my award.

S. K. MITRA, Presiding Officer

नई दिल्ली, 20 अगस्त, 1992

का.आ. 2393:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तरण में, केन्द्रीय सरकार, मैसर्स सेन्ट्रल कोलफील्ड्स लि. की सिज़या कोलियरी के प्रबन्धनात्मक के संबंध नियोजकों और उनके कर्मकारों के बीच, अनबंध में निर्विज्ञ औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (म. 1) धनवाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार की 14-8-92 को प्राप्त हुआ था।

[संख्या ए.ल-20012(139)/90-प्राई आर (कोल-I)]

[संख्या ए.ल-20012 (140)/90-प्राई आर (कोल-I)]

एस.सी. शर्मा, डैस्क अधिकारी

New Delhi, the 20th August, 1992

S.O. 2393.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1) Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Sugia Colliery of M/s. C. C. Ltd. and their workmen, which was received by the Central Government on the 14-8-92.

[No. L-20012(139)90. IR(COAL-I)]

[L-20012(140)90. IR(COAL-I)]

S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under Sec. 10 (1) (d)
of the Industrial Disputes Act, 1947.

Reference Nos. 229 and 230 of 1990

PARTIES :

Employers in relation to the management of
Sugia Colliery of M/s. C. C. Ltd., P. O.
Sugia, Distt. Hazaribagh.

AND

Their Workmen

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers.—Shri R. S. Murthy, Advocate.

For the Workmen.—Shri B. Joshi, Advocate.

STATE : Bihar INDUSTRY : Coal.

Dated, the 5th August, 1992

AWARD

By Order No. L-20012(139)90-I.R. (Coal-I), dated, the 26th September, 1990, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Sugia Colliery of C. C. Ltd., P. O. Sugia Distt. Hazaribagh by not re-instating the services of Sri Ram Jatan Singh, security guard of Sugia Colliery of C. C. L. w.e.f. 10-6-89 and not making payment of allied benefits payable to him w.e.f. 11-6-89 and onwards is justified ? If not to what relief the workman concerned is entitled ?”

2. By Order No. L-20012(140)90-I.R. (Coal-I), dated, the 26th September, 1990, the Central Government in the Ministry of Labour, has, in exercise of

the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Sugia Colliery of C.C. Ltd., P.O. Chatter Mandu, Distt. Hazaribagh by not reinstating the services of Sri Jai Mongal Singh, Security guard of Sugia colliery of C. C. L. with effect from 10-6-89 and not making payment of allied benefits payable to him w.e.f. 11-6-89 and onwards is justified ? If not to what relief the workman concerned is entitled ?”

3. These two reference cases have been heard analogously in view of the fact that the management in both the cases is identical and the concerned workmen employed by the management were dismissed from service after being found guilty of misconduct in a joint domestic enquiry.

Reference No. 229 of 1990

4. The case of the management of Sugia Colliery of M/s. C. C. Ltd., Hazaribagh, as disclosed in the written statement-cum-rejoinder, details apart, is as follows :

The reference is bad in law and not maintainable. Ram Jatan Singh, the concerned workman was previously employed in Sugia Colliery of M/s. C. C. Ltd. as Security Guard. Sugia Colliery is a part of Kuju Area of M/s. C. C. Ltd. Each area consists of a group of collieries and it has been placed under the control of a General Manager. The General Manager, Kuju Area is the head of Kuju Area. Sugia Colliery has also a Manager and Agent appointed under the Mines Act. The Agent is referred to as the Project Officer of the colliery under the administrative arrangement of the colliery. Sugia colliery does not have any certified Standing Orders and the Model Standing Orders framed for the establishments in Coal Mines under the Industrial Employment (Standing Orders) Act apply to the colliery. The concerned workman was posted for duty at Rauta Check Post as Security Guard. One of his duties was to see that the coal of Sugia Colliery and adjoining areas of the management was not stolen and no trucks loaded with coal were allowed to pass through the check post without proper document and authority and no empty trucks entered the mining areas without proper documents. Security Guards are required to enter in the Register maintained for the purpose datewise the Registration Nos. of the Trucks, Challan Nos., Gate Pass No., time of leaving colliery, name of driver etc. The Security Guard concerned is required to sign the entries made against each truck under the appropriate column. It came to the notice of the management prior to 7-5-88 that the coal was being illegally mined in Sugia Area of the colliery and it was being stolen by interested parties. It was also brought to the notice of the management that theft of coal was taking place by being transported through trucks. All these things were taking place in collusion and in connivance with the Security Guards on duty at Rauta Check Post. A Security team of the office of General Manager, Kuju Area organised a patrolling party to carry out a check on the night of 6/7-5-88

and the team found that two trucks loaded with coal and bearing Nos. BHA-1189 and BHM. 7798 were carrying illegally mined and stolen coal at Rauta Check Post. The coal was illegally extracted/mined from the old mine which was about 6 to 7 kilometers from Sugia Colliery. The Security team also found that the aforesaid trucks illegally entered into the mining area for the purpose of illegally extracting coal and committing theft of the same during the second shift of 6-5-88 through Rauta Check Post. During that shift from 2 p.m. to 10 p.m. Jai Mangal Singh, another Security Guard was on duty at Rauta Check Post. There were also no entries made in the register relating to the above trucks entering into the mining area through the Rauta Check Post which had also a barrier. The Security team found that Ram Jatan Singh, the concerned workman, was the Security Guard on duty in the following shift starting from 10 p.m. on 6-5-88 and ending at 6 a.m. on 7-5-88 and that he was also involved in the matter. Thereafter both of them, Ram Jatan Singh and Jai Mangal Singh along-with another security guard were issued with a combined chargesheet dated 9-5-88 in connection with the above matter which was subsequently modified by a corrigendum dated 12-5-88. All these security guards including the concerned workman submitted their explanations to the chargesheet. But their explanations were not considered to be satisfactory, as a result, the Project Officer/Agent, Sugia Colliery under whom security guards were working and under whose charge the Rauta Check Post falls, ordered a detailed enquiry into the matter and in the process appointed Sri S. K. Bahal, Dy. Personnel Manager (Administration), Kuju Area, who subsequently became personnel Manager (Administration), Kuju Area as Enquiry Officer. After due notice to the concerned, the Enquiry Officer held enquiry in accordance with the principles of natural justice. The concerned workmen and other security guards fully participated in the domestic enquiry and they took the assistance of co-worker for the purpose of their defence. The Enquiry Officer, on the basis of enquiry held by him and the evidence on record, submitted his report holding Ram Jatan Singh and Jai Mangal Singh guilty of the charge framed against them. The third workman, however, was not found to be involved in the case. The report of the Enquiry Officer was considered by the Project Officer and Agent and he accepted the same, having regard to the gravity of misconduct proved against these two workmen, he came to the conclusion that they should be dismissed from service. The case file was also submitted to the General Manager, Kuju Area and the Chief of Security, C.C.L. They also approved such action. Thereafter, by a letter dated 10-6-89 the concerned workman was dismissed from service of M/s. C. C. Ltd. and by another letter of even date Jai Mangal Singh was also dismissed from service. In the circumstances, the management has submitted that its action in dismissing the concerned workman from service be held to be justified.

5. The case of the concerned workman, as disclosed in the written statement submitted on his behalf by the sponsoring union, Rashtriya Mazdoor Sangh, briefly stated, is as follows :

The concerned workman and two other security guards posted at Rauta Check Post of the management during different shifts, were issued with charge-

sheet-cum-suspension letters dated 9-5-88. The charge-sheet contains general allegation of transportation of illegally mined and stolen coal through Rauta Check Post with the help and connivance of security guards posted on duty in the 2nd and 3rd shift of the aforesaid check post. The specific allegation mentioned in the charge-sheet was that during the night of 6/7 May, 1988 two trucks bearing Nos. BHA-1181 and BHM-7798 were detected carrying coal, illegally mined and stolen, at the Rauta Check Post. The time of detection and the place of location of the trucks with reference to the check post had not been mentioned and had been kept vague purposely to rope in as many security guards as possible and to manipulate things subsequently. Ram Jatan Singh, the concerned workman was on duty as Security Guard at Rauta Check Post during the 3rd shift of 6-5-88 commencing at 10 p.m. and ending at 6 a.m. of 7-5-88. He raised the defence that no trucks bearing any number passed through the check post during his duty hours. Subsequently it was learnt that the management had lodged an F.I.R. before the Police Station at Manda Kuju (A.P.) Dist. Hazaribagh alleging that Security party caught two trucks bearing No. BHA-1181 and BHM-7798 loaded with coal without proper records at about 4 a.m. of 7-5-88. The drivers and the owners of the trucks were prosecuted by the police. They produced the necessary papers before the search party in the morning of 7-5-88 and before the police as well as before the Court at the time of release of trucks and moving bail petitions. The search party as well as the police examined the check post register and did not find any entry of the trucks referred to in the F.I.R. Therefore they inferred that the trucks were carrying stolen coal without valid paper, through some unauthorised route connecting old quarries to the main road. Thus the check post was by-passed. It was subsequently learnt that the drivers and the owners of the above trucks produced valid papers and they claimed to have carried the coal lawfully through check post under valid papers and get their trucks released from the police custody by the order of the Court. The perfunctory departmental enquiry was conducted by Sri B. K. Bahal in contravention of the principles of natural justice. The findings of the Enquiry Officer is perverse. None of the witnesses examined in the departmental enquiry stated to have seen the aforesaid trucks passed through the Rauta Check Post. The documentary evidence does not indicate the aforesaid trucks having passed through the check post either empty or loaded. The management's witnesses merely deposed the defence plea of the drivers of the trucks that they did not transport any illegally mined or stolen coal, but they were transporting coal as per the order of the owners of the trucks through the check post with the knowledge of the management. They took the plea that they did not commit any theft of coal. The concerned workman gave his statement before the Enquiry Officer, corroborating his statement in the reply to the chargesheet. He was not cross-examined by the management's representative. The Enquiry report indicates that it is probably based on suspicion, if not under the influence of the management. The report of the Enquiry Officer suffers from infirmity of perversity, conjecture and suspicions and the dismissal of the concerned workman on the basis of such report is not justified.

6. In rejoinder to the written statement of the sponsoring union, the management has affirmed the facts as stated in its written statement and submitted that it is wrong to suggest that the search party or the police inferred that two trucks loaded with stolen coal without valid papers entered the old quarry through some unauthorised routes. There is absolutely no scope for the check post to be by-passed by any truck. The management has asserted that the domestic enquiry was held in conformance to the principles of natural justice and alleged that the concerned workman made a false statement during the enquiry and he could not disprove overwhelming evidence produced against him by the management.

7. In rejoinder to the written statement of the management, the union has stated that the allegation of the management that the concerned workman was responsible to see that the coal of Sugia colliery and adjoining areas of the management was not being stolen by trucks or by any means is without any merit. The union has submitted that if coal was being stolen and illegally mined, that was done with the knowledge and connivance with the officers of the management. The Security Officer, incharge of the patrolling party submitted F.I.R. stating that the trucks bearing Nos. BHA-1189 and BHM-7798 were found at the working place of the mine where coal was being mined from the mine and were loaded into trucks. They did not find these trucks near the check post and did not find the same having passed through the check post as there was no entry of these trucks in the register. The security team did not find the trucks moving through the check post either in empty condition or in loaded condition. Thus the allegation of the management that the security team found the aforesaid trucks illegally entering into the mining area through the check post on 6-5-88 is false and based on surmise and suspicion. The Enquiry Officer conducted the enquiry in a most perfunctory manner. He gave his finding on the basis of hearsay evidence not admissible under law. The prejudiced Project Officer did not apply his mind in accepting the finding of the Enquiry Officer. The trial court cleared the truck, owners and the trucks drivers and khalasis and exonerated them from the offences alleged against them as they produced valid papers relating to sale of coal by the management. The officers of the management were involved in the affairs with the parties and they supplied the papers through back-door method to save their parties from being prosecuted and punished by the criminal court.

8. Reference No. 230 of 1990.

The contentions and statements of facts as contained in the written statement-cum-rejoinder of the management disclose the same contentions and statements of facts as disclosed in the written statement-cum-rejoinder filed by it in Reference No. 229 of 1990.

The written statement and rejoinder of the sponsoring union also disclose the same statements of facts as disclosed in its written statement and rejoinder submitted in Reference No. 229 of 1990.

9. At the instance of the management the propriety and fairness of domestic enquiry was considered as preliminary issue. In the course of hearing on preli-

minary issue the management laid in evidence a sheaf of documents which have been marked Exts. M-1 to M-34.

The concerned workman did not lead any evidence, oral or documentary.

At later stage of the hearing, Shri B. Joshi, learned Advocate for the concerned workman conceded that the domestic enquiry was held fairly and properly. The materials on record also indicate that position. Hence, it has been held that the domestic enquiry was held fairly and properly. Thereafter the cases were heard on merits.

10. Sugia colliery is one of the collieries of M/s. C. C. Ltd. and is a part of Kuju Area which consists of a group of collieries. This colliery has a Manager and an Agent appointed under the Mines Act.

11. Both the concerned workmen Jai Mangal Singh and Ram Jatan Singh were employed in Sugia colliery as Security Guards. Jai Mangal Singh was deployed for duty on 6-5-88 in the 2nd shift, also known as 'B' shift from 2 p.m. to 10 p.m. at Rauta Check Post and on 7-5-88 again in the same shift. Ram Jatan Singh was deployed for duty on the night of 6/7-5-88 in the 3rd shift, also known as 'C' shift from 10 p.m. to 6 a.m. at the same check post. Ram Dulari Rai, another Security Guard was deputed on 6-5-88 in Rauta office.

12. It is the case of the management that prior to 7-5-88 it came to the notice of the management that coal was being illegally mined in Sugia colliery and adjoining Rauta mining area of the management and stolen by interested parties and that theft of coal was taking place and transported through trucks and all these were taking place in collusions and in connivance with the Security Guards on duty at Rauta Check Post. It is the further case of the management that a posse of security personnel of the office of the General Manager, Kuju Area organised the patrolling party to carry out a check on the night of 6/7-5-88 and the team found that two trucks loaded with coal bearing Nos. BHA-1189 and BHM-7798 were carrying illegally mined and stolen coal through Rauta Check Post and this coal was illegally extracted/mined from the old mine at a distance of 6 to 7 kilometre from Sugia colliery. The management has asserted that one of the duties of the Security Guard was to see that coal of Sugia colliery and adjoining area of the management was not stolen and no trucks loaded with coal were allowed to pass through the Check Post without proper document and authority and no empty trucks entered into the mining area without proper documents. The sponsoring union in its written statement submitted on behalf of the concerned workman, has hotly disputed the contention of the management with regard to the duties of the Security Guards at Rauta Check Post. According to the union, the duties of the Security Guards were to exercise control over trucks, empty or loaded, moving through the check post and that the movement register for trucks used to be maintained by the concerned workman giving the particulars of different matters relevant for the purpose. The union has denied and disputed that

the duties of the Security Guards extended to the entire colliery to prevent pilferage of coal from Sugia colliery and adjoining area of the mine.

Anyway, the drivers and khalasis of the trucks aforesaid with the trucks were apprehended by patrolling party near Rauta Check Post. The Patrolling Party lodged an F.I.R. with the police and handed over the drivers and khalasis with the trucks to the police.

13. Consequent upon this occurrence the management issued common chargesheet-cum-order of suspension dated 9-5-88 (Ex.M-24) to the concerned workmen and Ram Dulari Rai. This chargesheet was subsequently corrected by issuing a corrigendum dated 12-5-88 (Ex.M-25). The chargesheet-cum-order of suspension, after corrigendum, reads as follows :

"I hereby require you to state as to why disciplinary action even amounting to dismissal from the services of Central Coalfields Limited should not be taken against you under the Model Standing Orders by which you are governed on account of the following charges :

CHARGES :

'During the night of 6th/7th May, 1988, 2 Trucks of loaded coal bearing Truck No. BHA-1181 and BHM-7798 illegally mined and stolen were detected at Rauta Check Post by Security team of G M.(K)'s office at 3 A.M. It was also learnt that such coal were transported through Rauta Check Post since long with the help and connivance of security personnel on duty during 2nd and 3rd shift daily'.

If the above charges are proved they would constitute acts subversive of discipline and also constitute misconduct under the clause 17(i) (a) & (i) of the aforesaid Model Standing Orders and even thereafter considering what is misconduct has to be reasonably construed.

You are required to submit your explanation in respect of the above charges so as to reach the undersigned not later than 3 days of receipt of this letter. Should you fail to submit your explanation within the prescribed period, it will be presumed that you have no explanation to offer, that you accepted the charges framed against you and that thereafter the case can be disposed of by the Competent Authority on its merits without any further reference to you.

Pending enquiry and decision into the charges you will remain under suspension with immediate effect until further order. During the period of your suspension you will not leave the station and call on all working days at the office of the Asstt. Security Inspector, Sugia at 10 A.M. for getting your presence marked in a separate register or communication intended for you. You can then leave the office after such action is taken. You will be entitled for subsistence allowance as per rule.

Sd/-
Project Officer/Agent
Sugia."
9-5-88

The concerned workmen submitted their explanation to the chargesheet denying the charges and raising the defence that no trucks bearing the numbers aforesaid passed through the Check Post during their duty hours. Ram Dulari Rai was posted at Rauta office and not at Rauta Check Post. He was exonerated from the charges brought against him by the Enquiry Officer and, in my view, rightly. But the Enquiry Officer, considering the evidence on record held that 'circumstantially it is proved that the empty trucks in question have passed through Rauta Check Post in the 2nd shift and were caught by patrolling party while trucks were trying to cross the check post at about 3 A.M. on 7-5-88 with loaded coal in the 3rd shift! He also held that "it is evident that if the patrolling party had not been there on that day then loaded trucks would have crossed the check post with the help of security personnels." This finding of the Enquiry Officer, that the truck would have crossed the check post had not the Patrolling party was there, in my view, is a mere conjecture and inference not based on hard facts. Anyway, I will now discuss the charges brought against the concerned workman and decide whether the same are sustainable by evidence on record.

14. I have already reproduced the charges brought against the concerned workmen. They were arraigned on charges for having committed acts subversive of discipline and misconduct under Clause 17(i)(a) and Clause 17(i)(i) of the Model Standing Orders for industrial establishments in coal mines.

Clause 17(i)(a).—denoting misconduct reads as follows : Theft, fraud, or dishonesty in connection with the employer's business or property.

Clause 17(i)(i).—denoting misconduct reads as follows : Causing wilful damage to work in progress or to property of the employer.

15. It appears that on the night of 6/7-5-88 a posse of security personnels of the office of the General Manager organised a patrolling party to carry out check. This party consisted of eight persons, namely, (1) Kapil Deo Singh, Head Security Guard, (2) Harbans Singh, S.I. Kuju Area, (3) Jegeshwar Saw, Armed Guard, (4) D M. Rai, (5) Baban Singh, (6) Babulal Marandi, (7) Gambhir Singh, all Security Guards of General Manager's office and (8) N. K. Upadhva, A.S.S.I., Kuju Area. This party came to Rauta Check Post enroute to the mining area at about 11-30 P.M. and found Ram Jatan Singh, Security Guard on duty but barrier of the check post remaining open. Harbans Singh pointed this out to Ram Jatan Singh, Security Guard on duty and made a note thereof in the movement register of trucks (Ex.M-29). Thereafter Patrolling Party left the check post, proceeded to the mining area, found illegal mining was being done in abandoned mining and moved from there to Rauta Check Post while two trucks bearing numbers aforesaid followed the party and ultimately the drivers and khalasis with the trucks were apprehended inside Rauta Check Post by the Patrolling party at about 3 P.M. on 7-5-88. It appears from the

evidence of the members of the Patrolling party that drivers and khalasis admitted before them that they passed through Rauta Check Post at about 8/9 P.M. with empty trucks. Admittedly, Jai Mangal Singh was on duty at that time. The movement of these two trucks have not been recorded in the Movement Register. Admittedly, it was the duty of the Security Guards to record the movement of vehicles through the check post in the Movement Register. Although Jai Mangal Singh has denied that no trucks bearing the number aforesaid passed through the Check Post while he was on duty, it is very difficult to rely on his statement as some members of the Patrolling party have vouched for the fact that the drivers and khalasis of these vehicles admitted before them that they passed through the Check Post at 8/9 P.M. on 6-5-88. That apart, movement register of the trucks has not been signed by the concerned workmen which it was the duty to do so. Ram Jatan Singh has stated in domestic enquiry that the barrier was broken. This plea, in my view, is a product of afterthought for he did not cross-examine Harbans Singh on his point when he vouched for the fact that the barrier remained open.

16. The Enquiry Officer has made an inference that had the Patrolling Party not intervened in the matter the Security Guard would have allowed the trucks to pass through Rauta Check Post. There is absolutely no basis to draw such inference. Before Security Guard could leap into action the Patrolling Party intervened and apprehended the drivers and khalasis with the trucks at about 3 A.M. on 7-5-88. The Patrolling Party could have employed a ploy by lying in wait outside the check post to see the action of the Security Guard on duty and had he allowed the truck to pass through the check post when it could have been ascertained with certainty whether the security guard was in league with the illegally mining operators and transportation of illegally mine coals.

17. The evidence on record does not indicate that the concerned workman committed any misconducts of (i) subversive of discipline, (ii) theft, fraud or dishonesty in connection with the company's business or property and (iii) causing wilful damage to work in progress to property of the employer.

18. After considering the evidence on record, I come to the conclusion that the concerned workman did not commit any misconducts of (i) subversive of discipline, (ii) theft, fraud or dishonesty in connection with the employer's business or property and (iii) causing wilful damage to work in progress or to property of the employer. But they can be faulted for neglect of duty, but for this no damage has been brought against them. Jai Mangal Singh committed neglect of duty by allowing empty trucks to pass through the check post and by not signing movement register of trucks. Ram Jatan Singh has committed neglect of duty by keeping the barrier of the check post open and not signing the movement register for trucks. For this neglect of duty, although no charge had been laid against them, they are not entitled, in my view, to back wages although their dismissal from service is not justified.

19. Reference No. 229 of 1990 :

Accordingly, the following award is rendered—the action of the management of Sugia Colliery of C.C. Ltd., P.O. Sugia, Dist. Hazaribagh by not reinstating Ram Jatan Singh, Security Guard in service with effect from 10-6-89 is not justified. The management is directed to reinstate him in service but without any back wages within one month from the date of publication of the award with continuity of service. His period of absence from 10-6-89 till re-instatement shall be treated as leave without pay. The concerned workman is directed to report for duty within the time stipulated.

No cost is awarded.

Reference No. 230 of 1990

Accordingly, the following award is rendered—the action of the management of Sugia Colliery if C.C. Ltd., P.O. Chatter Mandu, Dist. Hazaribagh by not re-instating Jai Mangal Singh, Security Guard in service with effect from 10-6-89 is not justified. The management is directed to reinstate him in service but without any back wages within one month from the date of publication of the award with continuity of service. His period of absence from 10-6-89 till re-instatement shall be treated as leave without pay. The concerned workman is directed to report for duty within the time stipulated.

In the circumstances of the case, award no cost. This is my award.

S. K. MITRA, Presiding Officer

नई दिल्ली, 20 अगस्त, 1992

का.आ. 2394 :—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स भारत कॉकिंग कोल लि. की लोयाबाद कोलियरी के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, (मं. 1), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-8-92 को प्राप्त हुआ था।

[संख्या एल-20012(78)/89-प्राई.आर. (कोल-I)]
एम.भी. शर्मा, डैस्ट्रिक्ट अधिकारी

New Delhi, the 20th August, 1992

S.O. 2394.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute bet-

ween the employers in relation to the management of Loyabad Colliery of M/s. BCCL and their workmen, which was received by the Central Government on the 17-8-1992.

[No. L-20012/78/89-IR(COAL-I)]

S. C. SHARMA, Desk Officer
ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under sec. 10 (1) (d)
of the Industrial Disputes Act, 1947.

Reference No. 172 of 1989

PARTIES :

Employers in relation to the management of
Loyabad Colliery of M/s. Bharat Coking
Coal Ltd.

AND

Their Workmen

PRESENT :

Shri S. K. Mitra, Presiding Officer

APPEARANCES :

For the Employers.—Shri B. Joshi, Advocate.

For the Workmen.—Shri Lalit Burman, Vice-
President, United Coal Workers' Union.

STATE : Bihar. INDUSTRY : Coal.
Dhanbad, the 10th August, 1992

AWARD

By Order No. L-20012/78/89-I.R. (Coal-I), dated, the 15th November, 1989, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Loyabad Colliery of M/s. Bharat Coking Coal Ltd., Dhanbad in dismissing Shri Bablu Paul, Lamp Fitter of Loyabad Colliery from the service of the company w.e.f. 8-2-1987 is justified? If not, to what relief is the workman entitled?"

2. The case of the management of Loyabad Colliery of M/s. B.C.C. Ltd., and disclosed in the written statement-cum-rejoinder, details apart, is as follows:

The present reference is not legally maintainable. Bablu Paul was designated as Lamp fitter and was working as Cap Lamp Room Incharge of No. 6 Pit Cap Lamp Room of Loyabad Colliery during the year 1986. The census report dated 11-8-86 relating to No. 6 Lamp Cabin indicated the total number of Cap lamps in stock was 806, out of which 680 were in order and 126 were out of order whereas; the lamp

census report dated 24-8-86 relating to the same No. 6 Pit lamp cabin showed that the total number of cap lamps in the stock were 540 out of which 418 cap lamps were in order and rest 122 were out of order. Thus there was shortage of 266 cap lamps. Sri D. P. Gour, Executive Engineer, asked the concerned workman to explain the shortage. The concerned workman asked for some time and brought back several cap lamps and finally 105 cap lamps were found missing. In the circumstances, a chargesheet dated 20-10-86 was issued against the concerned workman for commission of misconduct under Clause 17(1)(a), 17 (1)(f) and 17(1)(i) of the Model Standing Orders. The concerned workman submitted his reply dated 4-11-86 admitting the fact that he was working as Cap Lamp Issue Incharge. He submitted that he carried on census of the cap lamps on 3-8-86 and 15-8-86 and the figure remained the same. Thus his contention appears to be that from 11-8-86 to 15-8-86 there was no shortage of cap lamps. He contended that he fell suddenly ill and remained sick from 17-8-86 to 26-8-86 and resumed duty on 27-8-86. From this it appears that his plea was that the loss of cap lamps occurred during the period of his alleged illness. Sri N. K. Jha, Deputy Personnel Manager of Loyabad Colliery was appointed Enquiry Officer and Sri D. P. Gour was appointed Presenting Officer. The Dy. Chief Mining Engineer of Loyabad Colliery is the Agent under the Mines Act, 1952 and he issued the charge-sheet to the concerned workman and appointed the Enquiry Officer and Presenting Officer. Notice of enquiry was issued to the concerned workman fixing the date of enquiry on 25-4-87. The enquiry was conducted on 25-4-87 in presence of the concerned workman. The Enquiry Officer submitted his report holding the concerned workman guilty of the misconduct charged against him. Approval of his dismissal was obtained from the General Manager of the concerned area. The General Manager is the Chief Mining Engineer of the colliery and is competent to approve order of dismissal. The concerned workman was dismissed from service by letter dated 8-2-88 by the competent authority. The management has submitted that its action in dismissing the concerned workman from service with effect from 8-2-88 is legal, bona fide and in accordance with the provisions of Model Standing Orders.

3. The case of the concerned workman, as appearing from the written statement submitted on his behalf by the sponsoring union, United Coal Workers Union, briefly stated, is as follows :

The concerned workman was working as a Lamp Fitter in Loyabad Colliery. The management issued a chargesheet dated 20-10-86 against him alleging (i) theft, fraud and dishonesty in connection with company's property; (ii) habitual neglect of work and (iii) causing wilful damage to work in progress or to property of the employer for the alleged loss of 105 cap lamps. The concerned workman submitted his reply on 4-11-86 denying the allegations. The management suspended him pending enquiry and proposed to hold enquiry and appointed Sri N. K. Jha, Sr. Personnel Officer as Enquiry Officer. The departmental enquiry was neither fair nor proper. The Enquiry Officer submitted his report and findings solely relying on the statement of Sri D. P. Gour, Executive Engineer. The report and findings of the Enquiry Officer is totally vitiated as there was no reliable evidence on record

to establish the basic fact that 105 cap lamps were really missing. Accepting the report and findings of the Enquiry Officer in its entirety, the Dy. Chief Mining Engineer dismissed the concerned workman by letter dated 8-2-88. As a Cap Lamp Fitter his duty was to repair the cap lamps and maintain the same in order and he was not responsible for issue and return of the lamps. The management issued similar charge-sheets to two Cap Lamp Clerks, one of whom was late Rajendra Prasad who was dismissed from service while no action was taken against other Cap Lamp Clerk, G. P. Sarkar. The management indulged in manipulation and unfair labour practice to get rid of the workman concerned. The action of the management in dismissing the concerned workman from service w.e.f. 8-2-88 is totally unjustified.

4. In rejoinder to the written statement of the sponsoring union, the management has stated that at the relevant time the concerned workman working as Cap Lamp Issue Incharge although designated as Lamp Fitter. The management has asserted that the departmental enquiry was fair and proper and there was ample evidence to establish that 105 cap lamps were missing from the stock. As Cap Lamp Room Incharge it was his responsibility to keep all the cap lamps under his charge and to exercise control and supervision over all the workmen working in the Cap Lamp Room and to maintain all cap lamps properly the departmental enquiry was held in accordance with the principles of natural justice.

5. In rejoinder to the written statement of the management, the sponsoring union has asserted that the present reference is maintainable and that the management is required to produce the relevant records to show that 105 cap lamps were missing from the Cap Lamp Cabin. It has been asserted that the departmental enquiry was not held fairly and properly.

6. At the instance of the management the fairness and propriety of the departmental enquiry was considered as preliminary issue. In the course of hearing on preliminary issue the management examined MW-1 Sri N. K. Jha, who was appointed Enquiry Officer and laid in evidence some documents which have been marked Exts. M-1 to M-71.

On the other hand, the sponsoring union did not adduce any evidence, oral or documentary.

Upon consideration of evidence on record it was held that the domestic enquiry was held fairly and properly. Thereafter the case was heard on merits.

7. Admittedly, Bablu Paul was employed as Lamp Fitter in Loyabad Colliery. Lamp Fitter is a manual worker employed on the repair and maintenance of safety lamp both oil and electric. Lamp Fitters are daily rated Senior Skilled workmen and placed in Category-V.

The case of the management is that Bablu Paul was working as Lamp Room Incharge of No. 6 Pit Cap Lamp Room of Loyabad Colliery during the year 1986. It appears that a charge-sheet was issued to the concerned workman describing him as Lamp Fitter but working as Cap Lamp Incharge of No. 6 Pit Cap Lamp Cabin of Loyabad Colliery (Ext. M-1). Bablu Paul has admitted the fact that he was working as Cap Lamp Incharge. Sri D. P. Gour, Executive En-

gineer of Loyabad Colliery, stated in the course of his statement before the Enquiry Officer that Sri Paul was working in the capacity of Lamp Room Incharge for last few years. Lamp Room Incharge is placed in Technical and Supervisory Grade 'C'. Thus, it is evidence that the management of Loyabad Colliery was taking work from the concerned workman as Lamp Room Incharge while designating him as Lamp Fitter for a few years and in the process. I am constrained to state that it has resorted to adhocism in the matter of deployment of the concerned workman for performance of duty as Lamp Room Incharge.

8. Regulation 48 of the Coal Mines Regulations, 1957, envisages duties of Lamp-room Incharges :

"Duties of lamp-room incharges—The competent person incharge of a safety lamp-room—

- (a) shall be responsible for ensuring that all lamps in the safety lamp-room are properly maintained in accordance with the provisions of the regulations;
- (b) shall see that the safety lamp-room is kept in a neat and tidy condition and that all damaged and defective guages, glasses and other parts of safety lamps are not kept or stored in such room;
- (c) shall see that fire-extinguishers or other means of dealing with fires provided in the safety lamp-rooms are in good condition and readily available for use;
- (d) shall see that all records required by the regulations for the issue, return and maintenance of safety lamps are properly maintained; and
- (e) shall carry out such other duties relating to maintenance, issue and return of safety lamps as may be specified by the manager or the undermanager or assistant manager."

8. The case of the management is that 105 cap lamps were found missing from No. 6 Pit Cap Lamp Room. Sri Gour, Executive Engineer of Loyabad Colliery, stated in domestic enquiry that some of the cap lamps were found missing from No. 6 Pit Cap Lamp Cabin and this was reported by one of the staff of Cap Lamp Cabin and the report was found correct when it was checked physically by a team of officers of the colliery. Consequent upon disclosure of such facts the management issued chargesheet dated 20-10-86 to the concerned workman on the following terms (Ext. M-1).

"It has been reported to me that 105 Cap Lamps are missing from No. 6 Pit Lamp Room. You are also not maintaining the daily report of issue and receipt of the lamps.

The total value of 105 Cap Lamps is approximately Rs. 40,000.

This has happened because of your negligence which is misconduct under the Model Standing Orders which states as follows :

17 (1) (a)—Theft, fraud or dishonesty in connection with the employer's business or property.

17 (1) (f)—Habitual neglect of work.

17 (1) (i)—Causing wilful damage to work in progress or to property of the employer.

You are hereby asked to explain within 48 hours of issue of this letter as to why disciplinary action should not be taken against you.

You will remain suspended pending enquiry."

The concerned workman submitted his explanation to the charge-sheet which is also re-produced hereinbelow (Ext. M-2).—

"In response to the allegation made against me vide the above charge sheet, I beg to submit following reply for your proper consideration :—

That in the capacity of Incharge of the Lamp room which I am not, I used to census of the cap lamps on every Sunday report of which is submitted before Executive Engineer. Sometimes on Holidays too census work is being done. This is a routine work.

I made the census on 3-8-86 and submitted the report on Wednesday, the 6-8-86 and requested him to make physical verification. He assured me for physical verification within a day or two but he did not do this. Again, for my own satisfaction, I conducted census of the cabin on 15-8-86. Both the times report remained same.

That all on a sudden, I fell sick on Sunday the 17-8-86 as it was not a working day. I reported sick on 18-8-86 at Loyabad Colliery Hospital. I remained sick for 18-8-86 to 26-8-86. I joined my duty on 27-8-86.

My repeated request to conduct physical verification of the lamps went in vain. If any loss or missing of the cap lamp was taken place, it must have happened during the course of my sickness. Had my request to conduct physical verification was acceded to I would not have been involved in this case. For errors I beg my pardon, but so long the case of misappropriation of property is there I deny as it is fully concocted and incorrect. The shortage of man power is also responsible for certain errors. My past record of service is sufficient to establish the fact that I am innocent in this matter.

I, therefore, request you to kindly review the chargesheet and allow me to resume duty for which I shall be highly obliged."

In the explanation provided by the concerned workman it was firmly asserted that he made census of the cap lamps on 3-8-86 and submitted a report on 6-8-86 to the Executive Engineer of Loyabad Colliery and that again he conducted census on 15-8-86 and on both these occasions the report remained the same. He further stated that he requested the Executive Engineer to make physical verification of the cap lamps and he later assured him to do so but ultimately he did not. These two census reports dated 3-8-86 and

15-8-86 have not been placed on record. The management has placed Lamp Census Report on 11-8-86 from which the following position appears —

| | |
|--|------|
| (i) Total No. of Cap Lamps | —806 |
| (ii) Total No. of Cap Lamps in order. | —680 |
| (iii) Total No. of Cap Lamps out of order. | —126 |

Thereafter details of the cap lamps found out of order were given. There is no knowing of the fact as to who made this census. Again, as claimed by the management another lamp census was done on 24-8-86 which indicates the following position :

| | |
|--|------|
| (i) Total No. of Cap Lamps | —540 |
| (ii) Total No. of Cap Lamps in order. | —418 |
| (iii) Total No. of Cap Lamps out of order. | —122 |

Thus, it is seen that the stock position of total lamps was reduced by 266. Shri Gour has stated that this census was made by a Team of officers. He has not spelt out the names of these officers nor did these officers appeared before the Enquiry Officer to prove the report. Anyway, Shri Gour has stated that the concerned workman retrieved some lamps, but finally 105 cap lamps were missing. The management has laid the blame for the missing cap lamps on the concerned workman.

9. In his explanation to the chargesheet the concerned workman stated that on 17-8-86 he became sick and as it was not a working day he reported sick on 18-8-86 in Loyabad Colliery hospital. He remained sick from 17-8-86 to 26-8-86, and joined duty on 27-8-86. It appears that during his absence the census was made by the management on 24-8-86. There is no knowing of the fact who remained incharge of the Lamp Room during the intervening period from 17-8-86 to 26-8-86. It appears that there was two other clerks working in the Lamp Room, namely, G. P. Sarkar and Rajendra Prasad. In his statement before the Enquiry Officer the concerned workman stated that due to negligence of Cap Lamp Issue Clerks, namely, G. P. Sarkar and Rajendra Prasad the issue register was not being maintained and that this has resulted in the missing of the lamps. In order to prove the misconduct of the concerned workman I consider that it was bounden duty of the management to prove that the cap lamps were missing from the date when the concerned workman reported sick from 17-8-86, by producing cogent evidence including Cap Lamp Register. Alternatively, the management should have proved by cogent evidence as to how the other staff working in the Cap Lamp Room had dealt with the cap lamps and accounted for it during the period the concerned workman remained absent from duty for his sickness. This has not been done. It has been alleged by the Union that the management issued similar charge-sheet to the other two Cap Lamp Clerks namely, Rajendra Prasad who has since deceased and G. P. Sarkar, but no action has been taken against Shri Sarkar. Anyway, upon consideration of evidence on record, I come to the conclusion that there is no

cogent evidence to establish the fact that cap lamps were found missing due to theft, fraud or dishonesty of the concerned workman in connection with employer's business or property or his habitual neglect of work or for his causing wilful damage to work in progress or to property of the employer.

10. Admittedly, the management dismissed the concerned workman from service with effect from 8-2-88. The action of the management in dismissing the concerned workman from service is not justified. Consequently, he is entitled to be reinstated in service with effect from the date of his dismissal from service, back wages and continuity of service.

11. Accordingly, the following award is rendered—the action of the management of Loyabag College of M/s. Bharat Coking Coal Ltd. in dismissing Bablu Paul from the service of the company with effect from 8-2-87 is not justified. The order of dismissal of the concerned workman from service is set aside and the management is directed to reinstate him in service with effect from the date of his dismissal and pay him back wages within one month from the date of publication of the award with continuity of service. His period of absence from duty from 8-2-88 till reinstatement shall be treated as leave without pay. The concerned workman is directed to report for duty within the time stipulated.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer

नई दिल्ली, 25 अगस्त, 1992

का.आ. 2395.—संघीय सरकार, धारूत्पादक खान विनियम, 1961 के विनियम 16 के उप विनियम (1) के परन्तुके खंड (क) के अनुसरण में, भारत सरकार के

नामांकन था और रोकार मंवाय को अधिसूचना गं. का. आ. 2793, तारीख 23 सितंबर, 1963 का निम्नलिखित ओर संगोष्ठन करती है, अर्थात्:—

उक्त अधिसूचना को सारणी में, “भारत” शीर्षक के अधीन इण्डियन स्कूल ऑफ माइन्स, धनबाद से संबंधित स. 2 के रासने संभ 2 का प्रविष्टि 2 में, मद (ii) के पश्चात् निम्नलिखित मर जोड़ी जाएगी, अर्थात्:—

“(iii) बी.टेक. (विवृत खनन) के बल विवृत खानों के प्रबंधकों के लिए”

[फा.म. प्र-66012/6/89-ग्राइ.एम.एच-II]

आर. टी. पाण्डेय, उप सचिव

New Delhi, the 25th August, 1992

S.O. 2395.—In pursuance of clause (a) of the proviso to sub-regulation (1) of regulation 16 of the Metalliferous Mines Regulations, 1961, the Central Government hereby makes the following further amendments in the notification of the Government of India, in the late Ministry of Labour and Employment No. S.O. 2793, dated the 23rd September, 1963, namely :—

In the Table to the said notification, under the heading “India”, against serial number 2 in column I relating to Indian School of Mines, Dhanbad, in the entry in column II, after item (ii), the following item shall be added namely :—

“(iii) B. Tech. (Opencast Mining) for managers of opencast mines only.”

[File No. S-66012/6/89-ISH-II]

R. T. PANDEY, Dy. Secy.

